

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§116.110, 116.116, 116.615, 116.710, 116.721, 116.787, 116.805, 116.820, 116.930, 116.1020, 116.1021, and 116.1424.

The proposed amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 1740, passed by the 79th Legislature, 2005, affects several aspects of air permitting.

Section 1 of SB 1740 created new Texas Health and Safety Code (THSC), §382.004, Construction

While Permit Application Pending. This section allows an applicant seeking a permit for a modification

(or lesser change) to an existing facility to begin construction related to the application after the

application is submitted, and before the commission has issued the permit. The decision to begin

construction is at the applicant's own risk. The provisions of THSC, §382.004 also prohibit the

commission from considering construction as a factor in determining whether to grant the permit sought

in the application. Because existing commission rules require persons to obtain the permit prior to

commencing construction, revisions are necessary to maintain consistency with the revised statute. The

proposed rules would revise Chapter 116, Control of Air Pollution by Permits for New Construction or

Modification, to ensure that an applicant has the option to commence construction once an application

for a modification or lesser change to an existing facility has been received by the commission. SB

1740 only authorizes construction to the extent permissible under federal law, so projects subject to

federal Prevention of Significant Deterioration (PSD) or federal Nonattainment New Source Review

(NNSR) permitting would not be eligible because federal regulations governing those programs do not allow construction to begin before the permit is issued.

Section 2 of SB 1740 amended THSC, §382.05195, Standard Permit, to modify how distance limits, setbacks, and buffers are evaluated at facilities authorized by an air quality standard permit. Under new THSC, §382.05195(j), if a standard permit requires a distance limit, setback, or buffer from other properties or structures, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of: 1) the date new construction, expansion, or modification of a facility begins; or 2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

Chapter 116 must be revised to maintain consistency with the new statutory requirements concerning distance limits, setbacks, and buffers for standard permits. The proposed rules would incorporate the new distance limit, setback, and buffer zone provisions of THSC, §382.05195(j) into the general rules for standard permits.

The proposed rules also include minor administrative changes to address outdated references, typographical errors, and conformity to Texas Register requirements and other agency rules and guidelines.

The commission is also proposing concurrent rulemaking to 30 TAC Chapter 321, Control of Certain Activities by Rule, in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

§116.110. Applicability.

The commission proposes to amend §116.110(a) to reference new §116.116(g), so that permit applicants for projects which meet the THSC, §382.004 criteria may initiate construction before the permit is issued. The commission proposes to amend §116.110(a)(1)(D) for consistency with 30 TAC Chapter 330, Municipal Solid Waste, which now includes standard permits in additional subchapters (such as the standard permit for municipal solid waste landfill facilities and transfer stations in 30 TAC Chapter 330, Subchapter U).

§116.116. Changes to Facilities.

The commission proposes to amend §116.116(b)(2) and (c)(2) to reference new §116.116(g). The proposed changes are necessary to allow permit applicants for projects which meet the THSC, §382.004 criteria to initiate construction before the permit is issued.

The commission proposes to amend §116.116(b)(3) to correct a reference to Subchapter E, relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63). The existing rule mistakenly refers to Subchapter C; the correct reference is Subchapter E.

The commission proposes to amend §116.116(e)(3) to correct a typographical error.

The commission proposes to amend §116.116(f) to update several citations and references relating to emission credit banking and trading.

The commission proposes new §116.116(g), which allows an applicant for a project that meets the THSC, §382.004 criteria to initiate construction before the permit is issued (once the permit application has been received). In order to qualify under the proposed subsection, the project must be a modification or lesser change to an existing facility, or the addition of a new facility or facilities under an existing permit. The proposed rule is drafted more broadly than the corresponding statutory language contained in THSC, §382.004, which only refers to the modification of (or lesser change to) an existing facility. The proposed rule would allow the addition of new facilities under an existing permit, in addition to the modification of an existing facility. This broader approach is necessary because the statutory language could be interpreted to mean that an applicant could not add any new equipment or any new sources of emissions. A narrow application of the statute would sharply limit its utility because most projects that trigger the requirement to obtain a permit amendment involve the addition of new equipment and new sources of emissions. The commission believes that SB 1740 and the associated statute was not intended to exclude the addition of new equipment at existing permitted sites. The commission invites comment on the proposed language concerning the construction of new facilities under an existing permit.

In addition, the project must not trigger federal PSD or NNSR permitting because those federal permitting programs require preconstruction authorization. Applicants electing to initiate construction before the permit is issued do so at their own risk. The commission is prohibited from considering such

construction as a factor in determining whether to issue the permit. If issues arise concerning best available control technology (BACT), protection of human health and the environment, compliance with applicable regulations, or other concerns, an applicant that has already initiated construction may face considerable expense to rework the project to satisfy applicable permit requirements. Although the proposed rules would allow construction or modification before the relevant permit is issued, the proposed rules prohibit operation of any facility until a permit authorizing the facility has been issued. This restriction is necessary so that the impacts from the facility are reviewed in advance, to ensure protection of human health and the environment.

Proposed §116.116(g) only applies to requests for permit amendments, and cannot be applied to requests, claims, registrations, or applications for a permit by rule (PBR) or a standard permit. PBRs and standard permits already provide a streamlined mechanism to authorize facilities and changes to facilities.

§116.615. General Conditions.

The commission proposes new §116.615(11) to implement THSC, §382.05195(j). Under the proposed rule, if a standard permit requires a distance limit, setback, or buffer from other properties or structures, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of: 1) the date new construction, expansion, or modification of a facility begins; or 2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility. The proposed rule would override and

supercede any conflicting requirement concerning distance limits, setbacks, or buffers in any standard permit.

§116.710. Applicability.

The commission proposes to amend §116.710(a) to allow an applicant to initiate construction before a flexible permit is issued in cases that meet the criteria of THSC, §382.004 and §116.116(g). Flexible permit projects that trigger federal PSD or NNSR permitting are not covered under THSC, §382.004 and §116.116(g) and are still required to obtain the permit before any actual work is begun.

§116.721. Amendments and Alterations.

The commission proposes to amend §116.721(a) and (b)(2) to reference new §116.116(g), so that applicants for flexible permit amendments which meet the THSC, §382.004 criteria may initiate construction before the permit is issued.

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

The commission proposes to amend §116.787 to reference new §116.116(g), so that permit applicants for projects which meet the THSC, §382.004 criteria may initiate construction before the permit is issued.

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

The commission proposes to amend §116.805 to reference new §116.116(g), so that permit applicants for projects which meet the THSC, §382.004 criteria may initiate construction before the permit is issued.

§116.820. Modifications.

The commission proposes to amend §116.820 to reference new §116.116(g), so that permit applicants for projects which meet the THSC, §382.004 criteria may initiate construction before the permit is issued.

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

The commission proposes to amend §116.930 to reference new §116.116(g), so that permit applicants for projects which meet the THSC, §382.004 criteria may initiate construction before the permit is issued.

§116.1020. Modifications.

The commission proposes to amend §116.1020 to reference new §116.116(g), so that permit applicants for projects which meet the THSC, §382.004 criteria may initiate construction before the permit is issued.

§116.1021. Amendments and Alterations.

The commission proposes to amend §116.1021(b)(2) to reference new §116.116(g), so that permit applicants for projects which meet the THSC, §382.004 criteria may initiate construction before the permit is issued.

§116.1424. Amendments and Alterations of Permits Issued Under this Subchapter.

The commission proposes to amend §116.1424 to reference new §116.116(g), so that permit applicants for projects which meet the THSC, §382.004 criteria may initiate construction before the permit is issued.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. Certain units of state or local governments that own or operate facilities requiring air quality standard permits and some New Source Review (NSR) permits may experience some economic benefit as a result of administration or enforcement of the proposed rules.

The proposed rules would implement provisions of SB 1740 and address two new statutory requirements. First, the proposed amendments would allow applicants for some NSR permits, at their own risk, to modify an existing facility or to begin construction related to the application after it has been received by the commission, and before the commission has issued the permit. Projects that trigger PSD or NNSR are excluded and must still obtain the permit before construction begins.

Secondly, the proposed amendments provide that facilities required to meet certain distance, setback, and buffer limits in air quality standard permits would be evaluated on whether they meet those limits on the date new construction, expansion, or modification of the facility begins, or the date any application or notice of intent is first filed with the commission to obtain approval for construction or operation at the facility. Some examples of regulated entities that might benefit from the amendments include animal feeding operations, rock and concrete crushers, concrete batch plants, animal carcass incinerators, oil and gas facilities, and hot mix asphalt plants.

Because the revised statutes generally allow more flexibility and certainty for persons seeking to obtain certain standard permits and NSR permits, there may be some economic benefits as a result of the statutory changes. If applicants for qualifying NSR permits elect to take advantage of the flexibility provided by the proposed rules regarding the construction or modification of facilities, they may be able to take advantage of more favorable conditions that affect such activities. However, if the project failed to meet permit requirements, such as BACT, protection of human health, or other regulatory requirements, then substantial rework costs could be incurred after the fact. Applicants for standard permits affected by distance, setback, and buffer requirements would be less subject to subsequent events outside their control, thus reducing the risk that the holder of a standard permit would have projects disrupted by changing circumstances that may affect the viability of their projects. Once boundary limits are satisfied and a standard permit is issued, those requirements could not be changed to affect the authorized project construction or operation.

The proposed rules would not impose new technical or administrative requirements for regulated local governments, federal entities, or industries. Any economic benefits derived from greater flexibility or from applying greater consistency or more efficient application of regulations would depend upon a wide variety of circumstances and unique characteristics of a regulated entity and cannot be estimated reliably on a statewide basis.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and more efficient and consistent application of permit requirements.

The proposed rules affect a wide number of entities and industries statewide, but would not impose new technical or administrative requirements. The proposed rules may provide some economic benefits to applicants for qualifying NSR permits regarding construction or modifications of facilities and to applicants for some standard permits affected by certain distance, setback, and buffer limits.

Applicants for qualifying NSR permits could elect to take advantage of the flexibility afforded by the proposed rules and begin construction or modification of facilities before a permit is issued. Applicants for certain standard permits affected by distance, setback, and buffer limits would be provided with the certainty that their projects would not be affected by future circumstances. Any benefit from allowing for flexibility in construction or modification of facilities or from greater certainty or consistency in the application of regulations concerning distance and boundary limits would depend upon a wide variety of

circumstances and unique characteristics of a regulated entity and cannot be estimated reliably on a statewide basis.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses would experience the same flexibility and consistency under the proposed rules as that experienced by governmental entities, individuals, and large businesses concerning qualifying construction events and boundary/distance limits.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a “major environmental rule” as defined in that statute. 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. This rulemaking action implements SB 1740, passed by the 79th

Legislature, that created new THSC, §382.004 and amended §382.05195. The proposed amendments to §§116.110, 116.116, 116.710, 116.721, 116.787, 116.805, 116.820, 116.930, 116.1020, 116.1021, and 116.1424 would allow an applicant seeking a permit for a modification (or lesser change) to an existing facility to begin construction related to the application after the application is submitted, and before the commission has issued the permit. The decision to begin construction is at the applicant's own risk. The proposed amendment to §116.615 modifies how distance limits, setbacks, and buffers are evaluated at facilities authorized by an air quality standard permit. The amendments do not specifically protect human health or the environment.

The proposed amendments to Chapter 116 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed rules do not meet any of the four applicability requirements. 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; 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.

Specifically, these amendments implement SB 1740, passed by the 79th Legislature, that created new THSC, §382.004 and amended §382.05195, and therefore specifically meet an express requirement of state law. SB 1740 only authorizes construction to the extent permissible under federal law and therefore does not exceed a standard set by federal law. There is no contract or delegation agreement

that covers the topic that is the subject of this action. Therefore, the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and the Texas Water Code (TWC), which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.002, 382.004, 382.017, and 382.05195. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed rulemaking does not meet any of the four applicability requirements. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed amendments and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of these proposed rules is to implement SB 1740, passed by the 79th Legislature, that created new THSC, §382.004 and amended §382.05195. The proposed amendments would substantially advance this stated purpose by changing sections of Chapter 116 to allow an applicant seeking a permit for a modification (or lesser change) to an existing facility to begin construction, at their own risk, related to the application after the application is submitted, and before the commission has issued the permit, and to modify how distance limits, setbacks, and buffers are evaluated at facilities authorized by an air quality standard permit.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, these rules provide applicants for a modification to an existing facility, or a lesser change, the option to begin construction of the modification prior to receiving the authorization, and provide more clarity and certainty as to when a buffer or setback is to be determined for facilities subject to a standard permit. In addition, because the proposed amendments regarding start of construction prior to authorization are less stringent than existing rules, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), 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 rulemaking 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 is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed revisions are necessary to ensure that commission rules maintain consistency with applicable statutes. The proposed revisions do not authorize or allow increased emissions of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations 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 is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The proposed rules affect all sites, regardless of the applicability of the Federal Operating Permits Program. The proposed rules have no specific effect on federal operating permit sites.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on October 2, 2006, at 2:00 p.m., at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. All comments should reference Rule Project Number 2005-052-116-PR. The comment period closes October 9, 2006. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.110, §116.116

STATUTORY AUTHORITY

These amendments are proposed under TWC, §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 TWC and other laws of the state. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.004, concerning Construction While Permit Application Pending, which allows a person who submits an application for modification to an existing facility or lesser change to begin construction at their own risk prior to issuance of the permit; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; and §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new sections implement TWC, §5.103 and §5.105; and THSC, §§382.002, 382.004, 382.011, 382.012, and 382.017.

§116.110. Applicability.

(a) Permit to construct. Except as provided under §116.116(g) of this title (relating to Changes to Facilities), before [Before] any actual work is begun on the facility, any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall either:

(1) (No change.)

(2) satisfy the conditions for a standard permit under the requirements in:

(A) - (C) (No change.)

(D) Chapter 330[, Subchapter N] of this title (relating to Municipal Solid Waste [Landfill Mining]);

(3) - (5) (No change.)

(b) (No change.)

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

(d) Exclusion. Owners or operators of affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter E [C] of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR [Code of Federal Regulations] Part 63)) are not authorized to use:

(1) (No change.)

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

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

(e) - (g) (No change.)

§116.116. Changes to Facilities.

(a) (No change.)

(b) Permit amendments.

(1) (No change.)

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

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

(4) (No change.)

(c) Permit alteration.

(1) (No change.)

(2) Requests for permit alterations that must receive prior approval by the executive director, except as provided by subsection (g) of this section, are those that:

(A) - (C) (No change.)

(3) - (5) (No change.)

(d) (No change.)

(e) Changes to qualified facilities.

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

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

(A) - (F) (No change.)

(4) - (8) (No change.)

(f) Use of credits. Notwithstanding any other subsection of this section, discrete emission reduction credits may be used to exceed permit allowables as described in §101.376(b)(1) [§101.29(d)(4)(v)] of this title (relating to Discrete Emission Credit Use [Banking and Trading]) if all applicable conditions of Chapter 101, Subchapter H, Division 4 [§101.29] of this title (relating to Discrete Emission Credit Banking and Trading) are met. This subsection does not authorize any physical changes to a facility.

(g) Construction while permit application pending.

(1) A person who submits an application for a permit amendment or permit alteration to authorize a modification of or a lesser change to an existing facility, or to authorize the addition of a new facility or facilities under an existing permit, may, at the person's own risk, begin construction related to the application after the application is received by the commission, and before the commission has issued the permit amendment or permit alteration.

(2) This subsection does not apply to requests, claims, registrations, or applications for a permit by rule or a standard permit.

(3) This subsection does not apply to any permit application for a project that would constitute a new major stationary source, or a major modification, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions).

(4) The commission may not consider construction begun under this subsection in determining whether to grant the permit amendment or alteration sought in the application.

(5) Any facility constructed under this subsection shall not operate until the commission has issued a permit amendment or alteration authorizing the facility.

SUBCHAPTER F: STANDARD PERMITS

§116.615

STATUTORY AUTHORITY

The amendment is proposed under TWC, §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 TWC and other laws of the state. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and §382.05195, concerning Standard Permit, which authorizes the commission to issue standard permits for new or existing similar facilities.

The proposed amendment implements TWC, §5.103 and §5.105; and THSC, §§382.002, 382.011, 382.012, 382.017, and 382.05195.

§116.615. General Conditions.

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

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

(2) (No change.)

(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under §116.110 of this title [(relating to Applicability)] shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.

(4) (No change.)

(5) Start-up notification.

(A) The appropriate air program regional office of the commission and any other air pollution control agency [program] having jurisdiction shall be notified prior to the

commencement of operations of the facilities authorized by a standard permit in such a manner that a representative of the executive director may be present.

(B) (No change.)

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

(D) (No change.)

(6) Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the commission's appropriate regional office [Office of Air Quality] and any other air pollution control agency [program] having jurisdiction prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(7) (No change.)

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

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

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions

precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control agency [program] having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

(11) Distance limitations, setbacks, and buffer zones. Notwithstanding any requirement in any standard permit, if a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(A) the date new construction, expansion, or modification of a facility begins;

or

(B) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

SUBCHAPTER G: FLEXIBLE PERMITS

§116.710, §116.721

STATUTORY AUTHORITY

These amendments are proposed under TWC, §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 TWC and other laws of the state. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.004, concerning Construction While Permit Application Pending, which allows a person who submits an application for modification to an existing facility or lesser change to begin construction at their own risk prior to issuance of the permit; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; and §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement TWC, §5.103 and §5.105; and THSC, §§382.002, 382.004, 382.011, 382.012, and 382.017.

§116.710. Applicability.

(a) Flexible permit. A person may obtain a flexible permit that [which] allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Changes to Facilities [Amendments and Alterations]). A person may obtain a flexible permit under §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account [before any actual work is begun], provided however:

(1) (No change.)

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

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

(4) (No change.)

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

§116.721. Amendments and Alterations.

(a) Flexible permit amendments. All representations with regard to construction plans and operation procedures in an application for a flexible permit, as well as any general and special provisions attached, become conditions upon which the subsequent flexible permit is issued. It shall be unlawful for any person to vary from such representation or flexible permit provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions, unless application is made to the executive director to amend the flexible permit in that regard and such amendment is approved by the executive director or commission, except as provided under §116.116(g) of this title (relating to Changes to Facilities). Applications to amend a flexible permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.711 of this title (relating to Flexible Permit Application).

(b) Flexible permit alterations.

(1) (No change.)

(2) All flexible permit alterations which may involve a change in a general or special condition contained in the flexible permit, or affect control equipment performance must receive prior approval by the executive director, except as provided under §116.116(g) of this title. The executive director shall be notified in writing of all other flexible permit alterations within ten days of implementing the change, unless the permit provides for a different method of notification. Any flexible permit alteration request or notification shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with

the requirements of §116.711 of this title, including the protection of public health and welfare. The appropriate commission regional office and any local air pollution program having jurisdiction shall be provided copies of all flexible permit alteration documents.

(3) (No change.)

(c) - (d) (No change.)

SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES

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

§116.787

STATUTORY AUTHORITY

The amendment is proposed under TWC, §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 TWC and other laws of the state. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.004, concerning Construction While Permit Application Pending, which allows a person who submits an application for modification to an existing facility or lesser change to begin construction at their own risk prior to issuance of the permit; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; §382.05183, concerning Existing Facility Permit, which allows existing facilities to apply for a permit; §382.05184, concerning Small Business Stationary Source Permit, which authorizes the commission to issue permits to small business stationary sources, as defined by TWC, §5.135; and §382.05186, concerning Pipeline

Facilities Permits, which authorizes the commission to issue permits to reciprocating internal combustion engines that are part of pipeline facilities.

The proposed amendment implements TWC, §5.103 and §5.105; and THSC, §§382.002, 382.004, 382.011, 382.012, 382.017, 382.05183, 382.05184, and 382.05186.

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

The owner or operator planning the modification of a facility permitted under this division relating to small business stationary source permits, pipeline facilities permits, and existing facility permits must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification, except as provided under §116.116(g) of this title (relating to Changes to Facilities). Amendments and alterations for permits issued under this division are subject to the requirements of Subchapter B of this chapter.

SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES

DIVISION 3: EXISTING FACILITY FLEXIBLE PERMITS

§116.805

STATUTORY AUTHORITY

The amendment is proposed under TWC, §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 TWC and other laws of the state. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.004, concerning Construction While Permit Application Pending, which allows a person who submits an application for modification to an existing facility or lesser change to begin construction at their own risk prior to issuance of the permit; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and §382.05183, concerning Existing Facility Permit, which allows existing facilities to apply for a permit.

The proposed amendment implements TWC, §5.103 and §5.105; and THSC, §§382.002, 382.004, 382.011, 382.012, 382.017, and 382.05183.

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

The owner or operator planning a modification of a facility permitted under this division, relating to existing facility flexible permits, must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification, except as provided under §116.116(g) of this title (relating to Changes to Facilities). Amendments and alterations for existing facility flexible permits are subject to the requirements of Subchapter B of this chapter.

SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES

DIVISION 4: VOLUNTARY EMISSION REDUCTION PERMITS

§116.820

STATUTORY AUTHORITY

The amendment is proposed under TWC, §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 TWC and other laws of the state. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.004, concerning Construction While Permit Application Pending, which allows a person who submits an application for modification to an existing facility or lesser change to begin construction at their own risk prior to issuance of the permit; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and §382.0519, concerning Voluntary Emissions Reduction Permit, which authorizes the commission to issue permits to for certain existing unpermitted facilities.

The proposed amendment implements TWC, §5.103 and §5.105; and THSC, §§382.002, 382.004, 382.011, 382.012, 382.017, and 382.0519.

116.820. Modifications.

The owner or operator planning the modification of a facility permitted under a voluntary emission reduction permit must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification, except as provided under §116.116(g) of this title (relating to Changes to Facilities).

SUBCHAPTER I: ELECTRIC GENERATING FACILITY PERMITS

§116.930

STATUTORY AUTHORITY

The amendment is proposed under TWC, §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 TWC and other laws of the state. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.004, concerning Construction While Permit Application Pending, which allows a person who submits an application for modification to an existing facility or lesser change to begin construction at their own risk prior to issuance of the permit; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and §382.05185, concerning Electric Generating Facility Permit, which authorizes the commission to issue permits for electric generating facilities that meet the requirements.

The proposed amendment implements TWC, §5.103 and §5.105; and THSC, §§382.002, 382.004, 382.011, 382.012, 382.017, and 382.05185.

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

The owner or operator planning a modification of a facility permitted under this subchapter must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification, except as provided under §116.116(g) of this title (relating to Changes to Facilities). Amendments and alterations for permits issued in accordance with this subchapter are subject to the requirements of Subchapter B of this chapter.

SUBCHAPTER J: MULTIPLE PLANT PERMITS

§116.1020, §116.1021

STATUTORY AUTHORITY

These amendments are proposed under TWC, §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 TWC and other laws of the state. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.004, concerning Construction While Permit Application Pending, which allows a person who submits an application for modification to an existing facility or lesser change to begin construction at their own risk prior to issuance of the permit; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and §382.05194, concerning Multiple Plant Permit, which authorizes the commission to issue a multiple plant permit for multiple plant sites that are owned or operated by the same person or persons under common control.

The proposed amendments implement TWC, §5.103 and §5.105; and THSC, §§382.002, 382.004, 382.011, 382.012, 382.017, and 382.05194.

§116.1020. Modifications.

The owner or operator planning the modification of a facility permitted under a multiple plant permit must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification, except as provided under §116.116(g) of this title (relating to Changes to Facilities).

§116.1021. Amendments and Alterations.

(a) (No change.)

(b) Multiple plant permit alterations.

(1) (No change.)

(2) All multiple plant permit alterations which may involve a change in a general or special condition contained in the permit, or affect control equipment performance must receive prior approval by the executive director, except as provided under §116.116(g) of this title. The executive director shall be notified in writing of all other multiple plant permit alterations within ten days of

implementing the change, unless the permit provides for a different method of notification. Any multiple plant permit alteration request or notification shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.1011 of this title (relating to Multiple Plant Permit Application), including the protection of public health and welfare. The appropriate commission regional office and any local air pollution program having jurisdiction shall be provided copies of all multiple plant permit alteration documents.

(c) (No change.)

SUBCHAPTER L: PERMITS FOR SPECIFIC DESIGNATED FACILITIES

§116.1424

STATUTORY AUTHORITY

The amendment is proposed under TWC, §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 TWC and other laws of the state. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.004, concerning Construction While Permit Application Pending, which allows a person who submits an application for modification to an existing facility or lesser change to begin construction at their own risk prior to issuance of the permit; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; and §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendment implements TWC, §5.103 and §5.105; and THSC, §§382.002, 382.004, 382.011, 382.012, and 382.017.

§116.1424. Amendments and Alterations of Permits Issued Under this Subchapter.

The owner or operator planning the modification of a facility permitted under this subchapter must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification, except as provided under §116.116(g) of this title (relating to Changes to Facilities). Amendments and alterations for permits issued under this subchapter are subject to the requirements of Subchapter B of this chapter, except that the public notice and public participation requirements of this subchapter shall apply instead of any public notification or public comment procedures required by Subchapter B of this chapter.