

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426, and 116.1428.

The new sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under these proposed rules, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the proposed rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and

the Railroad Commission of Texas. Much of the content of the proposed rules originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and new Texas Water Code (TWC), §5.558 and §27.022, which were created by HB 2201.

The purpose of the proposed revisions to Chapter 116 is to implement the requirements of HB 2201 that are to establish a reasonably-streamlined procedure for the commission to authorize the emission of certain air contaminants by projects within the commission's jurisdiction that are a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, public notice requirements for these applications need to be modified to reflect that the applications are not subject to contested case hearings.

The proposed rules do not include an expiration date or sunset date, but the commission specifically requests comment on whether an expiration date or sunset date is necessary.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; and 30 TAC Chapter 331, Underground Injection Control.

SECTION BY SECTION DISCUSSION

§116.1400. Purpose; and §116.1402. Applicability.

The commission proposes these new sections to specify the purpose and applicability of proposed new Subchapter L, Permits for Specific Designated Facilities. Specifically, the purpose of the new subchapter is to establish reasonably streamlined procedures to issue authorization for certain projects; those procedures are applicable to authorizations to construct and operate a component of the FutureGen project.

§116.1404. Permit Required.

The proposed new section requires anyone planning to construct a component of the FutureGen project designated in §116.1402 that may emit air contaminants into the air of this state to obtain a permit under this subchapter or qualify for a permit by rule under 30 TAC Chapter 106, Permits by Rule.

§116.1406. Compliance History.

The proposed new section requires compliance history reviews for any applications under the new subchapter.

§116.1408. Definitions.

The proposed new section contains definitions applicable to the new subchapter, clean coal projects, and the FutureGen project. Specifically, the proposed new section defines: clean coal project, coal, FutureGen project, component of the FutureGen project, FutureGen project profile, and designated project.

§116.1410. Emissions Profile for FutureGen Projects.

The proposed new section would establish an emissions profile for FutureGen projects. This emissions profile is included in the event that the United States Department of Energy does not specify an emissions profile for the FutureGen project. The emissions profile establishes limitations for the emissions of air contaminants from a component of a FutureGen project.

§116.1414. Applications for Facilities that are Components of a Designated Project.

The proposed new section provides the requirements for applications submitted under proposed new §116.1404 and requires any application to be submitted with a completed Form PI-1, Facility Permit Application. Proposed new §116.1414(1) - (11) requires applicants to make certain demonstrations regarding: protection of public health and welfare; measurement of emissions; New Source Performance Standards; National Emissions Standards for Hazardous Air Pollutants; NESHAPs for source categories (applicable maximum achievable control technology standard); performance demonstrations; nonattainment review; prevention of significant deterioration review; air dispersion modeling or ambient monitoring; federal standards of review for constructed or reconstructed major sources of hazardous air pollutants; application content; and best available control technology.

§116.1416. Public Notice.

The proposed new section establishes reasonable public notice requirements for applications to construct a component of a FutureGen facility. These requirements include the following: publication of the draft permit and preliminary decision in a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed

site; and availability of a copy of the application and draft permit for review and copying at a public place. Proposed new §116.1416(a)(1) - (10) state the required contents of the notice, which in addition to factual information about the applicant and the proposed location of the facility, include a description of the comment procedures; a statement that a person affected by the emission of air pollutants is entitled to request a notice and comment hearing under §116.1418, Public Participation, in a font size that provides emphasis and distinguishes it from the rest of the notice; a description of the procedure by which a person may be placed on a mailing list for further information; the time and location of any public meeting, as applicable; and the name, address, and phone number of the commission office to be contacted for further information. Proposed new §116.1416(b) and (d) provide the following procedural requirements: the applicant shall provide the executive director and all local air pollution control agencies having jurisdiction a copy of the public notice and date of publication; and the executive director shall make available for public inspection during the public comment period a copy of the draft permit and complete application. Proposed new §116.1416(e) establishes the requirements for the sign that the applicant shall place at the site declaring the filing of the application and stating how the executive director may be contacted for further information; proposed new §116.1416(c) requires the applicant to submit certification of compliance with the signage requirements in §116.1416(e). Proposed new §116.1416(f) requires that the executive director receive public comment for 30 days after the notice is published; proposed new §116.1416(g) allows the draft permit to be changed based on comments received.

§116.1418. Public Participation.

The proposed new section provides specific procedures for public participation in the issuance of a FutureGen permit. The new section states that permit applications for a component of a FutureGen project are not subject to a contested case hearing, establishes a process for issuing permits required to construct a component of the FutureGen project, and provides procedures for public comment. THSC, §382.0565(c), and TWC, §5.558(b), both require the commission's use of "*public meetings*, informal conferences, or advisory committees to gather the opinions and advice of interested persons."

(Emphasis added.) With respect to the use of public meetings, the intent of proposed new §116.1418 is to provide a notice and comment hearing procedure to facilitate those public meetings. Any public hearing held under this subchapter is not an evidentiary proceeding. Proposed new §116.1418(a) states that applications under this chapter are not subject to the contested case hearing process, but are subject to a notice and comment hearing process. Proposed new §116.1618(b) - (m) specifies the notice and comment hearing process. Specifically, subsections (b) - (m) allow for any person affected by emissions from a site regulated by this subchapter to request, within the 30-day comment period, the executive director to hold a notice and comment hearing on the draft permit; provide that the executive director shall decide whether to hold a hearing; state the requirements for publication of notice of a hearing on a draft permit; require the applicant to submit to the executive director and all local air pollution agencies having jurisdiction a copy of the notice of hearing and date of publication; allow the hearing notice to be combined with the notice of the draft permit required by this subchapter; allow any person to submit oral or written statements and data concerning the draft permit; require that any person believing that the draft permit or preliminary decision are inappropriate shall submit all reasonable arguments before the end of the comment period; and state the requirements for the executive director in responding to comments. These subsections also include administrative provisions requiring a tape

recording or written transcript of the hearing to be made available to the public; requiring the executive director to keep and make available to the public a record of all comments received and issues raised at the hearing; allowing the draft permit to be changed based on comments; and establishing the procedure for the executive director to provide notice of the executive director's final decision, the executive director's response to any comments submitted during the comment period or at the public hearing specified in this section, and the identification of any change in the condition of the draft permit and the reasons for the change to any person who commented during the public comment period or at the hearing, and to the applicant. Finally, proposed new §116.1418(n) requires the commission to use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons for all permits issued under this subchapter. Any public meetings held under this subchapter shall follow the notice and comment hearing procedures as defined in subsections (a) - (m). The executive director shall hold a public meeting on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or if the executive director determines that there is substantial public interest in the proposed activity.

§116.1420. Permit Fee.

The proposed new section would require payment of a permit fee consistent with the requirements of Chapter 116, Subchapter B, Division 4, Permit Fees.

§116.1422. General and Special Conditions.

The proposed new section states certain general and special conditions that will be included in permits issued under this subchapter. The general conditions in proposed new §116.1422(b) include a report of

construction progress, start-up notification, sampling requirements, equivalency of methods, recordkeeping, maximum allowable emission rates, maintenance of emission control, and compliance with applicable rules. Proposed new §116.1422(c) allows special conditions that are more restrictive than those in this title to be attached to a permit.

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

The proposed new section provides requirements for amendments or alterations of permits issued under this subchapter.

§116.1426. Renewal of Permits Issued Under this Subchapter.

The proposed new section provides for renewals of permits issued under this subchapter.

§116.1428. Delegation.

The proposed new section delegates to the executive director authority to take action on a permit issued under this subchapter.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period that the proposed new sections are in effect, no fiscal implications are anticipated for the agency or other units of state or local government. Any entities wishing to be permitted under the proposed rules may experience some cost savings due to a streamlined permitting process.

The proposed rules implement HB 2201. HB 2201 directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. The legislature determined that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and determined that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects.

At this time, there have been no permits issued by the agency for FutureGen projects. The commission anticipates that there may be one entity in the state that may apply for such a permit in the future. As the proposed rules would eliminate the contested case hearing process for specific projects and do not impose any new requirements for the agency, there may be minor cost savings to TCEQ and the State Office of Administrative Hearings due to the reduction in the number of contested case hearings.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed new rules are in effect, the public benefit anticipated from the changes due to the proposed rules will be compliance with state law and improving the state's ability to compete for federal funding for FutureGen projects.

These projects are anticipated to result in the development of cleaner sources of power to meet energy demands.

The proposed new rules may result in some reduced costs for eligible industry projects, but in general any cost savings are not expected to be significant.

The proposed rules are expected to only apply to one project at the current time. The project involves a variety of equipment used for power generation, hydrogen production, and carbon dioxide sequestration. This equipment may include bulk fuel handling equipment, gasifiers, reactors, separators, turbines, sulfur recovery units, and emission control equipment. Industry projects eligible by the proposed rules would no longer be subject to a contested case hearing. Instead, these projects would be subject to a notice and comment hearing process.

The elimination of contested case hearings may reduce travel costs for applicants, and may result in reduced administrative or professional costs that would have been incurred by the applicant to prepare for a contested case hearing.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small or micro-businesses are not expected to apply for permits for FutureGen projects, but if they do, they would experience the same cost savings as large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a “major environmental rule” as defined in the statute. Therefore, Texas Government Code, §2001.0225, does not apply to this rulemaking. “Major environmental rule” is defined in Texas Government Code, §2001.0225(g)(3), as 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 rules are intended to establish notice requirements for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing public notice requirements to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the definition of “major environmental rule” in Texas Government Code, §2001.0225.

Furthermore, the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, 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.

In this case, the proposed rules do not meet any of these applicability requirements. First, the proposed rules are consistent with, and do not exceed, the standards set by federal law. Second, the proposed rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express 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. Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of THSC, §382,0565, as added by HB 2201, which directs the commission, by rule, to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission, by rule, to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The proposed rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rules will not constitute a takings under Texas Government Code, Chapter 2007.

The commission invites public comment on this preliminary takings impact assessment.

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 include procedural mechanisms to authorize new sources of air contaminants; however, the proposed revisions do not create any new types of authorizations for new sources 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

Because proposed new Subchapter L includes applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the proposed new Subchapter L requirements for each emission unit affected by the addition of the requirements in Subchapter L at their site.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 20, 2005, at 10:00 a.m. in Building B, Room 201A, at the TCEQ's complex, located at 12100 Park 35 Circle. 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 and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, 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.

All comments should reference Rule Project Number 2005-053-091-PR. The proposed rules may be viewed on the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.

Comments must be received by 5:00 p.m., December 27, 2005. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

SUBCHAPTER L: PERMITS FOR SPECIFIC DESIGNATED FACILITIES

**§§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418,
116.1420, 116.1422, 116.1424, 116.1426, 116.1428**

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §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; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; THSC, §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; THSC, §382.0518, concerning preconstruction permits; THSC, §382.056, concerning notice of intent to obtain permit or permit review and hearing; THSC, §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed new sections implement TWC, §5.558(c) and THSC, §382.0565(d).

§116.1400. Purpose.

The purpose of this subchapter is to establish, by rule, reasonably streamlined procedures for the commission to issue authorization for projects within the commission's jurisdiction under Texas Health and Safety Code, Chapters 361 and 382 and Texas Water Code, Chapters 5 and 26.

§116.1402. Applicability.

(a) This subchapter applies to applications for authorization required to construct and operate a component of the FutureGen project.

(b) With the exception of subsection (a) of this section, as a specific but not limited exclusion, this subchapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

§116.1404. Permit Required.

Any person who plans to construct a component of a project as designated in §116.1402 of this title (relating to Applicability) that may emit air contaminants into the air of this state must obtain a permit under this subchapter or qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

§116.1406. Compliance History.

For all permit reviews under this subchapter, compliance history reviews are required under Chapter 60 of this title (relating to Compliance History).

§116.1408. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Clean coal project**--The installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(2) **Coal**--All forms of coal, including lignite.

(3) **FutureGen project**--A common reference to the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy.

(4) Component of the FutureGen project--A process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(5) **FutureGen project profile**--A standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

(6) **Designated project**--Any project subject to the jurisdiction of the commission and designated by the legislature as subject to the alternate public notice requirements in this subchapter.

§116.1410. Emissions Profile for FutureGen Projects.

If the United States Department of Energy does not specify an emissions profile for the FutureGen project, emissions of air contaminants from a component of a FutureGen project shall equal no more than:

(1) 1% of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10% of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units (MMBTU) of energy produced at the component; and

(4) 0.005 pounds of particulate matter per MMBTU of energy produced at the component.

§116.1414. Applications for Facilities that are Components of a Designated Project.

Any application submitted under §116.1404 of this title (relating to Permit Required) must include a completed Form PI-1, General Application for Air Preconstruction Permits and Amendments. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information that must be provided before the application is deemed

complete. In order to be granted a permit, the applicant for a project as designated in §116.1402(a) of this title (relating to Applicability) shall submit information to the commission that demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the facility will comply with all rules and regulations of the commission and with the intent of Texas Health and Safety Code, Chapter 382, the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people.

(2) Measurement of emissions. The permit may have provisions for measuring the emission of air contaminants as determined by the commission. These provisions may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the “Texas Natural Resource Conservation Commission Sampling Procedures Manual,” portable analyzers, or emissions calculations if a known process variable is monitored.

(3) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet at least the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by the United States Environmental Protection Agency (EPA) under the authority granted under Federal Clean Air Act (FCAA), §111, as amended.

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

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

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

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

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

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

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the facility is an affected source as defined in §116.15(1) of this title (relating to Section 112(g) Definitions), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)).

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

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

(B) identify the air contaminants emitted; and

(C) provide emission rate calculations.

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

§116.1416. Public Notice.

(a) The executive director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The notice shall contain the following information:

(1) the permit application number;

(2) the applicant's or permit holder's name, address, and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;

(3) a description of the location of the site or proposed location of the site;

(4) a description of the activity or activities involved in the permit application;

(5) the location and availability of the following:

(A) the complete permit application;

(B) the draft permit;

(C) all other relevant supporting materials in the public files of the agency;

(6) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(7) a statement that a person who may be affected by the emission of air pollutants from the facility or facilities is entitled to request a notice and comment hearing, pursuant to §116.1418 of this title (relating to Public Participation), printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(8) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;

(9) if applicable, the time and location of any public meeting; and

(10) the name, address, and phone number of the commission to be contacted for further information.

(b) The applicant shall submit a copy of the public notice and date of publication to the executive director and any local air pollution control agencies having jurisdiction over the site.

(c) The applicant shall submit a statement to the executive director certifying that the sign required by subsection (e) of this section has been posted consistent with the provisions of that subsection.

(d) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the appropriate commission regional office where the site is located.

(e) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall be provided by the applicant and shall substantially meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches and all lettering shall be no less than 1-1/2 inches in size and block printed capital lettering.

(B) The sign shall be headed by the words "PROPOSED AIR QUALITY PERMIT."

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application.

(D) The sign shall include the words "for further information contact."

(E) The sign shall include the words "TEXAS COMMISSION ON ENVIRONMENTAL QUALITY," and the address of the appropriate commission regional office.

(F) The sign shall include the phone number of the appropriate commission regional office.

(G) The sign shall include the name of the company applying for the permit.

(2) The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the period of public comment.

(3) The sign placed at the site shall be located at or near the site's main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations, if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director shall approve the variations before signs are posted.

(f) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft permit.

(g) The draft permit may be changed based on comments.

§116.1418. Public Participation.

(a) With the exception of the permitting procedural requirements specified in any other chapter of this title, permits authorized under this subchapter are not subject to the requirements relating to a

contested case hearing under Texas Health and Safety Code, Chapter 382; Texas Water Code; or Texas Government Code, Chapter 2001, Subchapters C - G. Permit applications under this chapter shall be subject to a notice and comment hearing as specified in subsections (b) - (n) of this section, as well as any applicable requirements in Chapters 39 and 55 of this title (relating to Public Notice and Requests for Reconsideration and Contested Case Hearings; Public Comment).

(b) Any hearing regarding a permit will be conducted under the procedures in this section and not under the Administrative Procedures Act.

(c) Any person who may be affected by emissions from a site regulated under this subchapter may request the executive director to hold a hearing on the draft permit. The request must be made during the 30-day public comment period.

(d) The executive director shall decide whether to conduct a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a site is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from a site regulated under this subchapter, and that request is reasonable, the executive director shall conduct a hearing.

(e) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site.

The notice must be published at least 30 days before the date of the hearing. The notice must include the following:

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

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

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

(f) The applicant shall submit a copy of the notice of hearing and date of publication to the executive director and all local air pollution control agencies having jurisdiction in the county in which the site is located.

(g) At the executive director's discretion, the hearing notice may be combined with the notice of the draft permit required by this subchapter.

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

(1) Reasonable time limits may be set for oral comments, and the submission of comments in writing may be required.

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

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

(i) A tape recording or written transcript of the hearing must be made available to the public.

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

(k) The executive director shall keep a record of all comments received and issues raised in the hearing. This record must be made available to the public.

(l) The draft permit may be changed based on comments.

(m) After the public comment period or the conclusion of any notice and comment hearing, the chief clerk of the commission shall send by first-class mail the executive director's decision, the executive director's response to any comments submitted during the comment period or at the public hearing specified in this section, and identification of any change in the condition of the draft permit

and the reasons for the change to any person who commented during the public comment period or at the hearing, and to the applicant.

(n) The commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons for all permits issued under this subchapter.

(1) Any public meetings held in accordance with this subsection shall follow the notice and comment hearing procedures in subsection (a) - (m) of this section.

(2) The executive director shall hold a public meeting:

(A) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(B) if the executive director determines that there is substantial public interest in the proposed activity.

§116.1420. Permit Fee.

(a) Fees required. Any person who applies for a permit under this subchapter must remit a fee as provided in Chapter 116, Subchapter B, Division 4 of this title (relating to Permit Fees) at the time of application for such permit.

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

§116.1422. General and Special Conditions.

(a) Permits issued under this subchapter may contain general and special conditions. The holders of a permit under this subchapter shall comply with any and all such conditions.

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

(1) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(2) Start-up notification.

(A) The permit holder shall notify the appropriate regional office of the commission prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow a representative of the commission to be present at the commencement of operations.

(B) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(C) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the commission's 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).

(3) Sampling requirements.

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

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

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

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

(5) Recordkeeping. The permit holder shall:

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

(B) keep all required records in a file at the facility site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(C) make the records available at the request of the executive director or any local air pollution control agency having jurisdiction over the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner;

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

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

(F) for persons certifying and registering a federally enforceable emission limitation in accordance with §116.611 of this title (relating to Registration To Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(6) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(7) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for emissions events and maintenance in accordance with Chapter 101, Subchapter F of this title (relating to Emission Events and Scheduled Maintenance, Startup, and Shutdown Activities).

(8) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with Texas Health and Safety Code, Chapter 382, Texas Clean Air Act, and the conditions precedent to the granting of the permit.

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

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

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

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

(2) Special conditions for written approval.

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

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

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

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

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

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

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

(II) the provisions in Chapter 116, Subchapter B, Divisions 5 and 6 of this chapter (relating to Nonattainment Review and Prevention of Significant Deterioration Review).

§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. Amendments and alterations for permits issued under this subchapter are subject to the requirements of Subchapter B of this chapter.

§116.1426. Renewal of Permits Issued Under This Subchapter.

Permits issued under this subchapter shall be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

§116.1428. Delegation.

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