

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §116.20 and new §116.178.

The commission also proposes to submit these new rules to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed additions to Chapter 116 would revise Subchapter A, Definitions, to add new §116.20, Portable Facilities Definitions, and would also revise Subchapter B, New Source Review Permits, to add new §116.178, Relocations and Changes of Location of Portable Facilities.

House Bill 555 of the 78th Legislature, 2003, modified the Texas Health and Safety Code (THSC), §382.056(r), to state that the requirements for public notice do not apply to: 1) the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years; or 2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

The Air Permits Division originally provided guidance regarding the proper procedures for movement of portable facilities in 2000, and updated the guidance in September 2001, May 2004, October 2006, and in September 2008. This rule package would incorporate the previously issued guidance into the TCEQ's rules.

THSC, §382.056(r) states that the requirements for public notice do not apply to the relocation or change

of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years. However, without a specific definition of "portable" and specific public notice requirements for a site, it is possible to gain authorization for several portable facilities on a site without the benefit of public participation in the process. This rulemaking would define "portable" and allow a facility to relocate, with approval from the executive director, to a site that has undergone public notice.

The primary affected types of facilities that use portable permit conditions are concrete batch plants, rock crushing plants, and hot mix asphalt plants. These types of facilities are often of interest to citizens who are affected by the relocation and change of location of these facilities and the accompanying public notice requirements. In some specific cases, permit holders have relocated a portable facility to a site for which the public was never provided any notification or opportunity for comment. In these instances, the permit holder provided the required public notice in a location where there was little impact on the public, and therefore, no objections. Within a very short period of time, the permit holder relocated to an area of much greater public interest and impact; however, because the permit holder had already provided public notice at the prior site, the permit holder was not required to provide public notice in the higher impact area.

Therefore, the commission proposes these modifications to Chapter 116 to place the existing guidance into rules that would define the public notice requirements for movement of portable facilities, to ensure that affected citizens are provided the opportunity to comment on a particular site, when notice is required by TCEQ rules.

In addition to clarifying public notice requirements, the commission proposes to specifically define

several terms to clarify concepts and processes relating to the relocations and changes of location of portable facilities. These definitions would assist permit holders in understanding when public notice is required for movement of facilities, what the public notice requirements are, how the commission distinguishes a portable facility from other types of facilities, and the period of time in which a facility can be considered temporary. In addition, the definitions would help to ensure that permit holders understand terms that are related to public works projects, which could be exempted from some of the rule requirements.

The TCEQ is conducting this rulemaking pursuant to its authority found in the Texas Clean Air Act and Texas Water Code (TWC). The purpose of the rulemaking is to ensure that public notice is consistently applied according to the THSC, §382.056 and 30 Texas Administrative Code (30 TAC) Chapter 39, Public Notice. The proposed definitions are consistent with the Texas Clean Air Act, TCEQ guidance, and past agency practice.

#### SECTION BY SECTION DISCUSSION

The commission proposes new §116.20, Portable Facilities Definitions, which defines terms used in new §116.178 regarding the movement of portable facilities. The terms defined are: change of location, portable facility, project, related project segments, relocation, right-of-way of a public works project, site, and temporary facility. As noted in this preamble, these definitions specifically relate to the movement of portable facilities.

The commission proposes new §116.178, Relocations and Changes of Location of Portable Facilities. This proposed new section, along with proposed new §116.20, would replace the guidance documents

provided by the Air Permits Division in 2000 and updated in 2001, 2004, 2006, and 2008.

Proposed subsection (a) includes the requirements that apply to portable facilities. In proposed paragraph (1), the commission specifies that a portable permit must be authorized by the executive director and designated with the appropriate portable permit, portable registration, or portable account number. A portable permit or registration number is typically a five-digit number followed by an "L" and additional digits (e.g., 50000L001). A portable account number begins with a "9" (e.g., 94-1234-X). Any facility that does not have one of these types of identification is not considered a portable facility by the Air Permits Division and THSC, §382.056(r)(1) does not apply.

Proposed paragraph (2) specifies that an applicant shall not use a permit by rule or standard permit authorization as a waiver of public notice. The reason for this provision is that most commission standard permits and permits by rule either do not require public notice or require public notice that is unique to those types of authorizations, rather than meeting the agency's air quality permit public notice requirements, which are located in 30 TAC Chapter 39, Subchapters H and K, Applicability and General Provisions; and Public Notice of Air Quality Applications. Because the Air Quality Standard Permit for Concrete Batch Plants and the concrete batch plant permits by rule require the same notice as is contained in Chapter 39, permit holders who authorize under either of these two mechanisms have provided the required public notice, and are exempted under proposed paragraph (2). The concrete batch plant permit by rule notice requirements were previously located in 30 TAC §106.5, Public Notice. This section and the underlying permits by rule in §§106.201 - 106.203 were repealed in 2004 due to the creation of the Air Quality Standard Permit for Concrete Batch Plants.

Proposed paragraph (3) includes a reference to new §116.20 regarding change of location, that provides the conditions upon which the executive director will convert a permanent facility permit number to a portable designation, upon request of the permit holder. A change of location requires that the permit holder meet the public notice requirements in Chapter 39, Subchapters H and K. Proposed paragraph (3) also includes the requirement that the permit holder publish notice for any change in an existing permit number, and that the notice include the new permit number and proposed location. This provision would help to ensure that affected citizens are provided notice regarding these facilities so that they will be aware of changes in permit numbers for facilities that may affect them.

Proposed subsection (b) outlines the conditions that would qualify an applicant for relocation. The proposed subsection states that the appropriate regional office or local air pollution control agency with jurisdiction, if applicable, may approve the relocation of a facility if the applicant's permit contains current special conditions that define the approval process to move. The applicant must request approval before starting construction and must also operate according to the terms of the permit. The proposed subsection further states that a relocation application cannot include a modification. The reason for this provision is that modifications require a separate application and approval process by the TCEQ Central Office in Austin, Air Permits Division.

Proposed paragraphs (1) and (2) provide the conditions under which the appropriate regional office or local air pollution control agency with jurisdiction will approve the applicant's relocation request: a permitted portable facility and associated equipment are moving to a site for support of a public works project in which the proposed site is located in or contiguous to the right-of-way of a public works project; or a portable facility is moving to a site in which a portable facility has been located at any time

during the previous two years and the site was previously subject to public notice as required under Chapter 39, Subchapters H and K, the Air Quality Standard Permit for Concrete Batch Plants, or the concrete batch plant permits by rule.

Proposed subsection (c) contains 11 paragraphs that detail the information that the permit holder must provide to the commission's affected regional office or local air pollution control agency with jurisdiction to receive approval for relocation. As stated in this proposed subsection, the permit holder shall submit the written relocation request and obtain written approval before the start of construction and commencement of operations at the new site. The proposed subsection further states that the permit holder is responsible for providing proof of submittal for all relocation requests. Examples of proof of submittal include regional office or local air pollution control agency with jurisdiction date stamps on hand-delivered applications, receipts from "return receipt requested" correspondence, or certified mail receipts from the United States Postal Service.

The following information is required under proposed subsection (c): the company name, address, company contact, and telephone number; a copy of the existing permit conditions and the maximum allowable emission rates table that are in effect for the permitted facility; the regulated entity number (RN), customer reference number (CN), applicable permit or registration numbers, and if available, the TCEQ account number; the location from which the facility is moving; a location description of the proposed site (city, county, and exact physical location); a scaled plot plan that identifies the location of all equipment and stockpiles, and also indicates that the required distances to the property lines can be met; a scaled area map that identifies the distance and direction to the closest off-property receptor (if required) and clearly indicates how the proposed site is contiguous or adjacent to the right-of-way of a

public works project (if required); the proposed date for start of construction and expected date for start of operation; the expected time period at the proposed site; the permit or registration number of the portable facility that was located at the proposed site any time during the last two years, and the date the facility was last located there (not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project); and proof that the proposed site had accomplished public notice, as required by Chapter 39, Subchapters H and K (not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project).

Proof of public notice may come in several forms: a copy of the notice, a copy of the publisher's affidavit, or a New Source Review permit issuance letter for a permit. The applicant may use the public files of the TCEQ to obtain proof of public notice; however, the responsibility for obtaining the proof of publication rests with the applicant.

The required information in proposed paragraphs (1) - (11) will allow staff to quickly identify the permit holder, review pertinent information concerning the permit holder's current permit conditions, and confirm that the permit holder has met agency Chapter 39 public notice requirements. The commission's intent is that all information required in proposed paragraphs (1) - (11) would be fully addressed in the permit holder's submittal, and that a complete submittal would enable the regional office or local air pollution control agency with jurisdiction to approve it and notify the permit holder of that approval within 12 business days. Relocation requests may be disapproved based on insufficient information in the application.

The permit holder's request for relocation would be considered approved if the appropriate regional office or local air pollution control agency with jurisdiction does not provide approval or denial of a complete submittal within 12 business days; however, the presumed approval does not exempt the applicant from ensuring that public notice was accomplished at the new site as required under Chapter 39, Subchapters H and K.

Proposed subsection (d) states that the appropriate regional office or local air pollution control agency with jurisdiction shall deny a permit holder's relocation request if that permit holder cannot meet the conditions of proposed subsection (c). The proposed subsection specifies that, if the permit holder cannot qualify for a relocation, then that permit holder may apply instead for a change of location. The proposed subsection references the definition in §116.20 for change of location. According to the definitions in §116.20, relocation does not require that public notice be provided under the provisions of Chapter 39, Subchapters H and K; however, a change of location does require Chapter 39 public notice.

Proposed subsection (e) provides that a permit holder shall request a permit alteration, as discussed in §116.116(c)(1)(B), Changes to Facilities, to update relocation instructions and that an applicant may, if desired, submit a relocation application simultaneously with the alteration request. Staff in the TCEQ Central Office in Austin, Air Permits Division, process relocation applications that are combined with alteration requests, and the permit holder cannot assume that approval of these actions will occur within 12 business days, as with relocation requests that are submitted alone.

Proposed paragraphs (1) and (2) specify that, along with the alteration request and relocation application, the permit holder shall include the required form and attachments and a copy of the current permit. The

required form and attachments consist of a completed PI-1 Form, the existing permit special conditions and maximum allowable emission rates table, and all associated information, including a detailed plot plan and area map. The executive director does not require a fee for these types of applications. If the executive director approves the request, Air Permits Division staff will notify the permit holder in writing that the permit has been altered, including new special conditions, along with the approval to relocate. Alterations, like relocations, do not require public notice.

Proposed subsection (f) concerns changes of location, and this subsection states that the permit holder must submit the required form and attachments to the TCEQ Central Office in Austin, Air Permits Division, along with an evaluation of best available control technology (BACT) and protection of public health and welfare. A change of location requires public notice, in compliance with Chapter 39, Subchapters H and K, and a permitted facility must meet all state and federal emission requirements. The permit holder shall include a completed PI-1 Form and the applicable documents required by the PI-1. The executive director does not require a fee for these types of applications, unless the permit holder also requests an amendment to the permit along with the change of location. Once the permit holder completes public notice, and the executive director determines that the permit holder has met all state and federal regulations, Air Permits Division staff will send the permit holder an authorization letter and a new permit.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

The proposed rules place existing agency guidance for portable facilities into Chapter 116 and clearly define the public notice requirements for the movement of portable facilities, ensure the public has opportunity for comment, and facilitate consistent interpretation and enforcement of rules regarding portable facility relocation.

Concrete batch plants, rock crushing plants, and hot mix asphalt plants are among the facilities that use portable permit conditions. The proposed rules are not expected to have a fiscal impact on local governments because local governments do not typically own portable facilities and current guidance already requires compliance with many provisions of the proposed rules.

#### PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be more clarity concerning public notice requirements for the movement of portable facilities, greater opportunity for public comment, and more consistent interpretation and enforcement of rules regarding portable facility relocation. Staff estimates that there are 233 businesses statewide that are owners or operators of portable facilities. Portable facilities include concrete batch plants, rock crushers, and hot mix asphalt plants. The proposed rules, which implement current agency guidance, are not expected to have a fiscal impact on businesses that own portable facilities. However, portable facilities that have not complied with current agency guidance could experience cost increases. Costs for providing public notice could range from \$200 to \$2,500 per notice depending on the rates of the newspaper chosen. Required evaluation of BACT and protection of public health and welfare could cost as much as \$10,000. BACT costs for concrete

batch and hot mix asphalt plants will vary depending on the control update needed. Costs could be as much as \$50,000 for concrete batch plants, and BACT for hot mix asphalt plants could start at \$60,000. Costs for control updates for rock crushing plants are expected to be minimal.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for the estimated 204 small or micro-businesses that own portable facilities as a result of the proposed rules. The proposed rules incorporate current agency guidance for portable facilities, and it is assumed that portable facilities have been or already are in compliance with current agency guidance.

#### SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### 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 rules in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rules do not meet the criteria for a

major environmental rule. A "major environmental rule" is a rule that is specifically intended 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 rulemaking is not a major environmental rule because it is procedural in nature. The intent of the proposed rules is to require public notice for relocation of a portable facility if public notice has not been accomplished at that site. In addition to clarifying public notice requirements, this rulemaking will define terms to further explain the process of relocating and changing locations of portable facilities.

Therefore, the specific intent of the rules is not to protect the environment or reduce risks to human health from environmental exposure.

The proposed rules will not affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state. Under the proposed rules, public notice will be accomplished when a portable facility is moved to a site at which no notice has as yet been provided. Requiring applicants to comply with the public notice procedural requirements specified by the proposed rules will not have an adverse effect on the economy, the environment, or public health and safety.

Additionally, this rulemaking does not meet the definition of a major environmental rule because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed

an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action, which is designed to ensure that public notice requirements are applied consistently, does not exceed an express requirement under state or federal law. There is no contract or delegation agreement that covers the topic that is the subject of this action. Furthermore, the rulemaking is not adopted solely under the general powers of the agency, but is authorized by specific sections of the THSC, Chapter 382 and the TWC, as cited to in the STATUTORY AUTHORITY portion of this preamble, including THSC, §382.051, Permitting Authority of Commission; Rules, and THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and made a preliminary assessment determining that the Texas Government Code, Chapter 2007, Governmental Action Affecting Private Property Rights, is not applicable. Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or it means a governmental action that affects an

owner's private real property that is the subject of the governmental action in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property.

The intent of the proposed rules is to require public notice for relocation of a portable facility if public notice has not been accomplished at that site. In addition to clarifying public notice requirements, this rulemaking will define terms to further explain the process of relocating and changing locations of portable facilities. Promulgation and enforcement of these proposed rules will constitute neither a statutory nor constitutional taking of private real property. The proposed rules do not restrict or limit a landowner's rights to the property or reduce the market value of the property by 25 percent. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this proposed rulemaking action is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1), Goals). The proposed new rules would indirectly benefit the environment because some entities would now be required to provide public notice and meet other permitting requirements in instances in which they have not done so in the past. The proposed new rules would also allow TCEQ staff to consistently interpret and enforce the requirements regarding relocations or changes of location of a portable facility. Consistently enforced public notice and permitting requirements would help to ensure that portable facilities have fewer adverse impacts to public health and the environment. The CMP policy applicable to this rulemaking action 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 §501.32, Policies for Emission of Air Pollutants). Therefore, in accordance with 31 TAC §505.22(e), Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS portion of this preamble.

#### EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 116 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed new rules are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permit to include the new Chapter 116 requirements.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on October 13, 2009, at 10:00 a.m. in Building E, Room 201S, at the commission's central office, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion is not permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services, at (512) 239-0779. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Jessica Rawlings, 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/>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2008-031-116-PR. The comment period closes October 14, 2009. Copies of the proposed rule documents can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Lisa Martin, Air Permits Division, (512) 239-1966.

## **SUBCHAPTER A: DEFINITIONS**

### **§116.20**

#### **STATUTORY AUTHORITY**

The new section is proposed under the authority of the following: TWC, §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and THSC, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue a permit for numerous similar sources; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, that authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, and 382.056.

**§116.20. Portable Facilities Definitions.**

Unless specifically defined in the Texas Clean Air Act or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the Texas Clean Air Act, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter B, Division 8 of this chapter (relating to Portable Facilities), have the following meanings, unless the context clearly indicates otherwise.

(1) Change of location--The process of gaining approval and moving a permitted facility and associated sources to a new location in which public notice is required, in accordance with the requirements of Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(2) Portable facility--A facility authorized by a permit containing special conditions that allow the facility to relocate. Portable facilities are authorized by the Texas Commission on Environmental Quality, Air Permits Division. To be a portable facility, the permit for that facility is designated with a portable permit number, portable registration number, or portable account number. These portable designations are used to facilitate the relocation of these types of facilities under specific criteria, and are not authorized under Chapter 106 of this title (relating to Permits by Rule).

(3) Project--A public works contract or series of contracts for segments of work within close proximity to each other.

(4) Related project segments--For facilities on a Texas Department of Transportation right-of-way, related project segments are one contract with multiple project locations or one contractor with multiple contracts in which separate project limits are in close proximity to each other. A facility that is sited on the right-of-way is usually within project limits. However, a facility located at an intersection or wider right-of-way outside project limits is acceptable if it can be easily associated with the project.

(5) Relocation--The process of gaining approval and moving a facility and associated sources to an approved site in which no public notice is required under Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(6) Right-of-way of a public works project--Any public works project that is associated with a right-of-way. Examples of right-of-way public works projects are public highways and roads, water and sewer pipelines, electrical transmission lines, and other similar works. A facility must be in or contiguous to the right-of-way of the public works project to be exempt from the public notice requirements listed in Texas Health and Safety Code, §382.056.

(7) Site--As defined in §122.10 of this title (relating to General Definitions).

(8) Temporary facility--A facility that will occupy a designated site for not more than 180 consecutive days or that will supply material (such as concrete, hot mix asphalt, crushed rock, etc.)

for a single project (single contract or same contractor for related project segments), but not other unrelated projects.

**SUBCHAPTER B: NEW SOURCE REVIEW PERMITS**

**DIVISION 8: PORTABLE FACILITIES**

**§116.178**

**STATUTORY AUTHORITY**

The new section is proposed under the authority of the following: TWC, §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and THSC, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue a permit for numerous similar sources; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, that authorizes the commission to require public notice of certain permit applications and procedures for requesting hearings and responding to comments.

The proposed new section implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, and 382.056.

**§116.178. Relocations and Changes of Location of Portable Facilities.**

(a) Portable facility requirements. The following requirements apply to portable facilities.

(1) A portable permit must be authorized by the executive director and designated with the appropriate portable permit, portable registration, or portable account number.

(2) An applicant shall not use a permit by rule or standard permit authorization as a waiver of public notice (public notice requirements as specified in subsection (b)(2) of this section) regardless of the registration number or account code assigned by the executive director. A facility authorized by the Air Quality Standard Permit for Concrete Batch Plants or concrete batch plant permits by rule for which an applicant provided public notice is an exception.

(3) The executive director will not convert a permanent facility permit number to a portable designation unless the owner or operator is requesting a change of location as defined in §116.20 of this title (relating to Portable Facilities Definitions) for the facility. The permit holder must publish notice for any change in an existing permit number. The notice must identify the new permit number and the proposed location.

(b) Relocation qualifications. The appropriate regional office or local air pollution program with jurisdiction may approve the relocation of a portable facility if the applicant's permit contains current special conditions defining the approval process to move. A relocation application cannot include a modification. Approval for relocation is based on one of the following conditions:

(1) a permitted portable facility and associated equipment are moving to a site for support of a public works project in which the proposed site is located in or contiguous to the right-of-way of the public works project; or

(2) a portable facility is moving to a site in which a portable facility has been located at the site at any time during the previous two years and the site was subject to public notice as required under Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications), the Air Quality Standard Permit for Concrete Batch Plants, or the concrete batch plant permits by rule.

(c) Relocation request requirements. The permit holder shall submit a complete written request to the appropriate commission regional office or local air pollution control agency with jurisdiction for the new location and obtain written approval before the start of construction and commencement of operations at the new site. The permit holder is responsible for providing proof of submittal for all relocation requests. Construction may begin after receipt of approval from the appropriate commission regional office or local air pollution control agency with jurisdiction or 12 business days after the date of postmark or the date of personal delivery of the request, whichever occurs first, unless disapproval is sent within the 12 business days. The permit holder's request is considered approved if the appropriate regional office or local air pollution control agency with jurisdiction does not provide approval or denial of a complete submittal within 12 business days; however, the presumed approval does not exempt the applicant from ensuring that public notice was accomplished at the new site as required under Chapter 39, Subchapters H and K of this title. The relocation request shall contain all of the following information:

(1) the company name, address, company contact, and telephone number;

(2) a copy of the existing permit conditions and the maximum allowable emission rates table that are in effect for the permitted facility;

(3) the regulated entity number (RN), customer reference number (CN), applicable permit or registration numbers, and, if available, the Texas Commission on Environmental Quality account number;

(4) the location from which the facility is moving (current location);

(5) a location description of the proposed site (city, county, and exact physical location description);

(6) a scaled plot plan that identifies the location of all equipment and stockpiles, and also indicates that the required distances to the property lines can be met;

(7) a scaled area map that identifies the distance and direction to the closest off-property receptor (if required) and clearly indicates how the proposed site is contiguous or adjacent to the right-of-way of a public works project (if required);

(8) the proposed date for start of construction and expected date for start of operation;

(9) the expected time period at the proposed site;

(10) the permit or registration number of the portable facility that was located at the proposed site any time during the last two years, and the date the facility was last located there. This information is not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project; and

(11) proof that the proposed site had accomplished public notice, as required by Chapter 39, Subchapters H and K of this title. This proof is not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project.

(d) Denial of relocation. If the permit holder cannot qualify for a relocation, as described in subsection (c) of this section, the appropriate regional office or local air pollution control agency with jurisdiction shall deny the relocation request and the applicant may request a change of location, as defined in §116.20 of this title.

(e) Requesting changes to relocation instructions. A permit holder shall request from the executive director a permit alteration, as defined in §116.116(c)(1)(B) of this title (relating to Changes to Facilities), to update relocation instructions. The permit holder may apply for a relocation simultaneously with the alteration. The permit holder shall obtain written approval before the start of construction and commencement of operations at the new site and shall not assume approval within 12 businesses days. The permit holder shall submit the following information for any alteration request and relocation application to the TCEQ Central Office in Austin, Air Permits Division:

(1) the required form and attachments, including a detailed plot plan and area map; and

(2) a copy of the current permit.

(f) Requesting changes of location. For a change of location application, the permit holder shall submit the required form and attachments to the TCEQ Central Office in Austin, Air Permits Division. All applications must include an evaluation of best available control technology and protection of public health and welfare.