The Texas Commission on Environmental Quality (commission, agency, or TCEQ) adopts the amendments to §§116.12, 116.115, 116.180, 116.182, 116.186, 116.188, 116.190, 116.192, 116.601, and 116.617; new §116.127; and the repeal of §116.121.

The amendments to §§116.115, 116.188, and 116.601; new §116.127; and the repeal of §116.121 are adopted *without changes* as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7676) and will not be republished. Sections 116.12, 116.180, 116.182, 116.186, 116.190, 116.192, and 116.617 are adopted *with changes* to the proposed text as published in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7698) and will be republished.

The amendments to §§116.12, 116.115, 116.180, 116.182, 116.186, 116.188, 116.190, 116.192, and 116.601; and new §116.127 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP). The amendment to §116.617 will not be submitted to EPA as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On June 10, 2005, the TCEQ submitted the amendment to §116.12 to the EPA as a revision to the New Source Review (NSR) SIP and §116.150 as a revision to the Nonattainment New Source Review (NNSR) SIP, both adopted on May 25, 2005. On

February 1, 2006, the TCEQ submitted amendments to §§116.12, 116.121, 116.150, 116.180, 116.182, 116.184, 116.186, 116.188, 116.190, and 116.617 to the EPA as revisions to the NSR SIP; amendments to §§101.1, 116.150, and 116.151 as revisions to the NNSR SIP; and the amendment to §116.160 as a revision to the Prevention of Significant Deterioration (PSD) SIP, adopted on January 11, 2006. On September 23, 2009, the EPA published notice of the proposed disapproval of these revisions to the Texas SIP (74 *Federal Register* 48467) and on September 15, 2010, published the final disapproval of the revisions (75 *Federal Register* 56424).

This rulemaking and the companion rulemaking (Rule Project No. 2008-030-116-PR) address issues identified by the EPA in its September 15, 2010, final disapproval notice and ensure that TCEQ regulatory requirements regarding the NSR permitting program meet the requirements of the Federal Clean Air Act (FCAA) and are approvable into the SIP. Specifically, those concern definitions for the Plant-Wide Applicability Limit (PAL) rules and other changes to the PAL rules to meet federal requirements, including the conditions for reopening PAL permits. The rulemaking also amends §116.617, State Pollution Control Project Standard Permit (which is the existing standard permit rule), to limit when existing registrations for this standard permit can be amended or renewed and provides the deadline for final registrations under this specific standard permit. This is intended to facilitate a smooth transition between this section and the new non-rule air quality standard permit adopted concurrently by the commission. The

amendments would also remove obsolete references and make non-substantive administrative changes.

EPA also disapproved §116.151 as amended in 2006, but did not provide any specific reasons for its disapproval. In its letter transmitting this rulemaking to EPA, as discussed earlier, the commission is requesting EPA consider §116.151 as amended in 2006 together with these current rule changes as revisions to the SIP.

In the September 15, 2010 notice, EPA also proposed to take no action on §§116.400 - 116.406, which were included in the 2006 rulemaking. These sections are permit requirements for compliance with FCAA, §112(g), but they are not necessary elements of the SIP. The rulemaking withdraws from EPA consideration as a revision to the SIP of §§116.400, 116.402, 116.404, and 116.406, as adopted by the commission on January 11, 2006, effective on February 1, 2006. No changes have been made to the rule text or numbering of these sections.

This rulemaking is at least as stringent as the federal rules being implemented because it includes the applicable elements of the major NSR and PAL permit programs. The rulemaking action also ensures that the rules will meet the requirements of the FCAA, which requires that the elements of the SIP be enforceable, include replicable elements, and ensure compliance and accountability. The specific changes to the PAL rules meet

these basic requirements.

When EPA adopted the NSR reform rule amendments (67 *Federal Register* 80185, December 31, 2002), it expanded its requirement for states' SIP submittals of their rules that implement major NSR to require a demonstration of why both the specific major NSR permitting program requirements, including applicable definitions, are at least as stringent as EPA's regulations, if states do not adopt the specific EPA program. TCEQ's major NSR and its PAL rules do not incorporate the EPA rules by reference but they do include the basic elements of those permit programs. Therefore, this rulemaking is at least as stringent as the federal rules being implemented. As discussed elsewhere, the changes in this rulemaking are made to specifically address issues identified by EPA in its September 15, 2010, disapproval notice so that the rules can be approved as revisions to the SIP. The changes make the commission's rules as stringent as EPA's regulations. The definitions of baseline actual emissions and projected actual emissions do not include malfunction emissions, and thus are more stringent than EPA's definitions. In addition, this rulemaking action also ensures that the rules will meet the requirements of the FCAA, which requires that the elements of the SIP be enforceable, include replicable elements, and ensure compliance and accountability.

SECTION BY SECTION DISCUSSION

§116.12, Nonattainment and Prevention of Significant Deterioration Review

Definitions

The commission is adopting amendments to the definitions of the terms, "baseline actual emissions," "net emissions increase," and "projected actual emissions." These amendments resolve the EPA's objection to this section of the rule.

The EPA, in its final disapproval notice, commented that the definition of baseline actual emissions differed from the federal rules because the definition did not specify that these emissions are meant to be calculated based on the average rate. The amendment specifying that the rate is an average rate would be included in §116.12(3)(A), (B), (D), and (E). The commission is also removing the term "exempted from" §116.12(3)(E) and is replacing it with "unauthorized" since emissions events were not exempt under 30 TAC Chapter 101, General Air Quality Rules, but must be reported.

The commission is making changes from the proposal to §116.12(3)(E). The EPA in its final disapproval (see September 15, 2010 (75 *Federal Register* 56424)) agreed that the inclusion of emissions events in the definition of baseline actual emissions would have the effect of inflating the baseline and narrowing the gap between the baseline actual emissions and the planned emission rate. The EPA noted that the current definition of baseline actual emissions included emissions events and stated that to be approvable

the definition would have to exclude emissions events. This is because EPA noted that the definitions of "baseline actual emissions" and "projected actual emissions" must both include or exclude malfunctions emissions. However, EPA's interpretation excludes the conditional language at the end of the paragraph which limits emissions to those that have been or are being authorized and, therefore, EPA's statement that the commission is including emissions events is in error. The commission's long standing policy is not to reward emissions from emission events, which are upset events and unplanned maintenance, startup, and shutdown (MSS) activities. TCEQ's term "unplanned MSS activities" substitutes for the EPA's term "unscheduled MSS." Unplanned MSS activities are the functional equivalent of malfunctions, as are all upset emissions. EPA also objects to the use of the word "may," stating that it indicates discretion without any replicable procedures for such determinations.

Consequently, §116.12(3)(E) is being reworded to make clear that MSS emissions reported under Chapter 101 shall be included in the calculation of baseline actual emissions but only to the extent that they have been authorized or are being authorized. Because emissions events are not included, they are therefore excluded from the calculation of baseline actual emissions. The commission does not authorize emissions events, which are emissions from upsets and unscheduled MSS activities. While the current text, as adopted in 2006, implemented that long standing policy, the rule text was not written to clearly limit the inclusion of only planned MSS emissions that have

been or are in the process of being authorized during a defined time period. These changes ensure, first, that there is no discretion as to inclusion of only certain planned MSS emissions (and consequently the exclusion of emissions events) in the baseline actual emissions calculation, and second, that the definitions of baseline actual emissions and projected actual emissions are compatible and are therefore approvable as revisions to the SIP.

Additionally, the commission is making changes from the proposal by reinstating in §116.12(3)(E) the phrase "or are being authorized," relating to planned MSS emissions. This phrase was proposed to be removed because the executive director expected to recommend proposal and adoption of a concurrent rulemaking that would have included mandatory authorization of MSS emissions. Since the rulemaking that would have required authorization of MSS emissions has been remanded to staff, it would be inappropriate to remove the phrase at this time. The commission's rule that provides an incentive for authorizing planned MSS emissions, §101.222(h), provides a logical time frame for identifying which planned MSS emissions should be included in the calculation of baseline actual emissions, and the ending date of the incentive program is used in this definition. Further, §116.12(3)(D) provides that non-compliant emissions are excluded. To the extent that there are planned MSS emissions that remain unauthorized on or after March 1, 2016, those will necessarily be "non-compliant" and therefore, no longer excluded from the excluded emissions in subparagraph (D). This is

consistent with the commission's policy regarding authorization of planned MSS emissions. Based on the incentive schedule in §101.222(h), the TCEQ has received several hundred applications thus far for authorizing planned MSS at approximately the midway point of the schedule and, therefore, expects that the industries named in the remaining portion of the schedule will also submit applications for authorizing planned MSS over the next two years.

The commission is also adopting an amendment to the term "net emissions increase" in §116.12(20). EPA commented in the Technical Support Document related to the proposed disapproval that this definition might not match federal requirements for enforceability because it did not include a statement that the definition was federally enforceable. The commission is specifically adding the term "federally" to modify "enforceable" in §116.12(20)(C)(ii).

Additionally, the commission is amending the term "projected actual emissions" in §116.12(29) and is adopting it with changes from the proposal. The commission is replacing the phrase "unauthorized emissions from startup and shutdown activities" with "emissions from planned maintenance, startup, or shutdown activities, which were historically unauthorized and subject to reporting under Chapter 101 to the extent that they have been authorized or are being authorized." This change is necessary to ensure that this definition is compatible with the definition of "baseline actual emissions." As

discussed earlier, the definition of "baseline actual emissions" is being amended to ensure that the commission's intent of what types of emissions can be included in that calculation is clear. While the commission intended that these two definitions be compatible when adopted in 2006, the EPA's comments indicated that may not be the case. The EPA commented that the term "projected actual emissions" does not include emissions from startups, shutdowns, and malfunctions. However, as stated in the original adoption preamble for this rule in 2006, the commission excluded malfunction emissions in compliance with long-standing commission policy to exclude non-compliant emissions. The EPA in its final disapproval (see September 15, 2010 (75 *Federal Register* 56424)) agreed that the inclusion of emissions events, which are similar to the federal term "malfunctions," in the definition of baseline actual emissions would be inappropriate. Further, EPA has approved definitions in other states that also exclude malfunctions; (see September 15, 2010 (75 *Federal Register* 56441)). These amendments are necessary to ensure that both definitions are approvable as revisions to the SIP.

§116.115, General and Special Conditions

The commission is amending §116.115(b)(2)(F) with a statement that emissions exceeding the maximum allowable emission rates established in a permit are not authorized and are a violation of the permit. Additionally, the commission is amending §116.115 with non-substantive administrative changes in §116.115(b)(2)(B)(iii) and

(H)(i) and (c)(2)(B)(ii)(II).

§116.121, Actual to Projected Actual and Emissions Exclusion Test for Emissions Increases

The commission repealed §116.121. The text of this rule has been moved to adopted new §116.127.

§116.127, Actual to Projected Actual and Emissions Exclusion Test for Emissions

The commission is adopting §116.127 to address actual to projected actual emissions and the emissions exclusion test for emissions increases. There have been no changes to the language that was originally in §116.121. This new section requires documentation associated with the projected actual emissions rates and records of compliance as identified in the federal rule, 40 Code of Federal Regulations (CFR) §52.21. Section 116.127(a) requires a demonstration that federal NSR does not apply be submitted with any permit application or registration. This demonstration must be documented by records that include a project description, the facilities affected, and a description of the applicability test. Subsection (b) requires monitoring of emissions that could increase as a result of the project if projected actual emissions are used to determine the project emission increase at a facility.

Subsection (c) requires owners or operators of electric utility steam generating units to

submit to a report to the executive director documenting the emissions for each calendar year that records are required under the actual-to-projected actual test. Subsection (d) requires owners or operators of facilities other than electric generating units to submit a report to the executive director if annual emissions exceed the baseline actual emissions by a significant amount. Subsection (e) requires records to be maintained and made available for review.

As stated in the preamble when adopted by the commission in 2006, the commission expects that projected actual emissions will be used extensively in registrations or claims for non-PSD and nonattainment NSR authorizations where a maximum allowable emission rate is not specified in the rule.

Based on the changes to the definition of projected actual emissions, discussed elsewhere in this preamble, the commission expects that this rule is approvable as a revision to the SIP.

§116.180, Applicability

The commission is removing the term "account site" from §116.180(a)(1) and replacing it with the term "existing major stationary source" to make this requirement more consistent with federal requirements. The commission is also making similar changes to §116.180(a)(3) and (4). Additionally, because the federal term "emissions unit" is

defined very similarly to the term "facility" as defined in the Texas Clean Air Act (TCAA), the commission is adding the language "or emissions unit " whenever the term facility is used (i.e., §116.180(a)(3), (b) and (c)). Additionally, the commission is making a change from the proposal in this section and as used elsewhere in the commission's PAL rules, by adding the phrase "at a major stationary source" to the term "emissions unit" to ensure that the term is better understood as the EPA generally uses the term in NSR permitting. The term "emissions unit at a major stationary source" means a single piece of equipment; it does not necessarily have the same meaning as used in some of the maximum achievable control technology standards in 40 CFR Part 63. The commission is also restricting the issuance of PAL permits to existing stationary sources in §116.180(a)(5). The EPA, in its September 15, 2010, final disapproval notice stated that the current rule lacks a provision that limits applicability of a PAL to an existing major stationary source as required by the corresponding federal rule. This amendment resolves the EPA's objection to this section of the rule.

§116.182, Plant-wide Applicability Limit Permit Application

In its September 15, 2010, final notice of disapproval, the EPA stated that the term facility was vague and unenforceable and that §116.182(1) might not require all facilities emitting a PAL pollutant at a major stationary source to be included in the PAL permit application. This amendment resolves the EPA's objection to this section of the rule. Since the federal term emissions unit is defined very similarly to the term facility as

defined in the TCAA, the commission is adding the language "or emissions unit at a major stationary source" when the term facility is used in §116.182(a)(1). Also, the commission is adding the phrase "at a major stationary source" where appropriate to make clear that PALs are applicable to major sources only. Additionally, as the result of comments in the EPA's final disapproval (75 *Federal Register* 56424, September 15, 2010), the commission is adding language to require that all emission units at the major stationary source that emit the PAL pollutant be included in the PAL permit application. This language ensures that the rule is consistent with the federal requirement that the TCEQ has appropriate information to review when a PAL application is submitted. This language should also ensure approvability of the rule into the SIP.

§116.186, General and Special Conditions

In its September 15, 2010, final notice of disapproval, the EPA stated that the term facility was vague and unenforceable and that §116.186 might not require all facilities emitting a PAL pollutant at a major stationary source to be included in the PAL permit. This amendment resolves the EPA's objection to this section of the rule. Since the federal term emissions unit is defined very similarly to the term facility as defined in the TCAA, the TCEQ is adding the language "or emissions unit" where the term facility is used in subsections (a) and (b)(1) and changing the word "federal" to "major" in subsection (b)(1) to clarify the type of NSR referenced in this subsection. Also, the commission is adding the phrase "at a major stationary source" where appropriate to

make clear that PALs are applicable to major sources only. Also, as the result of comments in the EPA's final disapproval (75 *Federal Register* 56424, September 15, 2010), the commission is adding language to require that all emission units at the major stationary source that emit the PAL pollutant be included in the PAL permit. This language is added to ensure approvability of the rule into the SIP. Additionally, the commission is defining the term "responsible official" by referencing the definition in 30 TAC Chapter 122.

In the September 15, 2010, final disapproval notice, the EPA noted that TCEQ's rule lacked a mandate that failure of the monitoring system to meet the requirements of this section is a violation of the PAL permit. Consequently, the commission is including this requirement as adopted §116.186(b)(9). Existing subsection (b)(9) and (10) is redesignated as subsection (b)(10) and (11). In the notice, the EPA also stated that the specific monitoring definitions: continuous emissions monitoring system (CEMS) as defined in 40 CFR §51.165(a)(1)(xxxi) and §51.166(b)(43); continuous emissions rate monitoring system as defined in 40 CFR §51.165(a)(1)(xxxiv) and §51.166(b)(46); continuous parameter monitoring system as defined in 40 CFR §51.165(a)(1)(xxxiii) and §51.166(b)(45); and predictive emissions monitoring system (PEMS) as defined in 40 CFR §51.165(a)(1)(xxxii) and §51.166(b)(44) are essential for the enforceability of and providing the means for determining compliance with a PALs program. The commission is incorporating these definitions by reference in adopted §116.186(c)(1). Existing

subsection (c)(1) and (2) is redesignated as subsection (c)(2) and (3). This amendment resolves the EPA's objection to this section of the rule. Additionally, the commission is amending §116.186 with non-substantive administrative changes.

§116.188, Plant-wide Applicability Limit

The commission is amending §116.188 with non-substantive administrative changes.

§116.190, Federal Nonattainment and Prevention of Significant Deterioration Review

In its September 15, 2010, final notice of disapproval, the EPA stated that the term facility was vague and unenforceable. This amendment resolves the EPA's objection to this section of the rule. Since the federal term emissions unit is defined very similarly to the term facility as defined in the TCAA, the commission is adding the language "or emissions unit" where the term facility is used in subsection (a). Also, the commission is adding the phrase "at a major stationary" source where appropriate to make clear that PALs are applicable to major sources only and changing the word "federal" to "major" to clarify the type of NSR referenced in subsection (a).

§116.192, Amendments and Alterations

In its final disapproval notice, the EPA requested that the state include provisions relating to the reopening of a PAL by the executive director. This amendment resolves the EPA's objection to this section of the rule. The commission is including a statement

that acceptance of a PAL is agreement by the permit holder to reopening the permit in subsection (c). Also, the commission is including a mandatory reopening of the permit for the purposes that are stated in §116.186(c)(1). These purposes include: the correction of typographical or calculation errors; decrease of the PAL limit to reflect creditable emissions reductions; or revision of the permit to reflect an increase in the PAL. Additionally, the commission is allowing discretionary reopening of the permit for the purposes stated in §116.186(c)(2). These purposes include: revision of the PAL to reflect newly applicable federal requirements; revision to the PAL to reflect any other enforceable requirement imposed on major stationary sources under the SIP; reduction of the PAL to avoid national ambient air quality standards (NAAQS) or PSD increment violation; or reduction of the PAL to avoid an adverse impact on a federal class I area.

As the result of comments received from the EPA on the proposed amendments the commission is changing §116.192(a)(1) and (4) to specifically state that the Best Available Control Technology (BACT) equivalent required by the rule is federal BACT as identified in §116.160(c)(1)(a). The commission is also changing §116.192(a)(2) to state clearly that all facilities contributing to an increase in emissions resulting in source's emissions equaling or exceeding its PAL are subject to appropriate PSD or NNSR authorization to ensure that a new permit or a major modification action is obtained. Finally, the commission is changing §116.192(c)(1)(C) to include a reference to 40 CFR §51.165(f)(11). These revisions will resolve the EPA's concerns regarding this section of

the rule. Additionally, the commission is amending §116.192 with non-substantive administrative changes.

§116.601, Types of Standard Permits

The commission is removing language referring to specific standard permits in §116.601(a)(1) in favor of a more general statement that includes those standard permits adopted into the rule. This change will facilitate any future adoptions or repeals of standard permits that are part of Chapter 116.

§116.617, State Pollution Control Project Standard Permit

The commission is making changes from the proposal to §116.617(a)(4) and (5). The commission is amending §116.617(a)(4) to provide that the existing requirements of that paragraph will cease to be effective on March 3, 2011. The commission is also including §116.617(a)(5) which provides that, notwithstanding the requirements of §116.604, on or after March 3, 2011, no new or modified registrations will be accepted and no existing registrations will be renewed. The date in these revisions was changed from February 17, 2011 to March 3, 2011, to accurately reflect the effective date of this rule.

The EPA in its September 15, 2010, final disapproval noted its objections to the State Pollution Control Project Standard Permit (PCP) including: the PCP is a generic permit that can be used at any source including major sources; it is overly broad in that it does

not specify the types of pollution control equipment it authorizes; and it allows for source specific review and case-by-case authorization. A non-rule standard permit that can be used for pollution control projects is concurrently being issued by the commission. Persons who wish to have authorization for pollution control equipment by a standard permit may use the new non-rule standard permit for pollution control equipment.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute and if it did meet the definition, would not be subject to the requirement to prepare a RIA.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the revisions is to include definitions for and make other changes to the PAL rules to meet federal requirements, including the conditions for reopening PAL permits. The rulemaking would also amend §116.617,

which is the existing standard permit rule, to limit when existing registrations can be amended or renewed, and provide the deadline for final registrations under this specific standard permit. This is intended to facilitate a smooth transition between this section and the proposed new non-rule air quality standard permit.

In the September 23, 2009, notice, EPA also proposed to take no action on §§116.400 - 116.406, which were included in the 2006 rulemaking. These sections are permit requirements for compliance with FCAA, §112(g), but they are not necessary elements of the SIP. The rulemaking proposes the withdrawal from EPA consideration as a revision to the SIP of §§116.400, 116.402, 116.404, and 116.406 as adopted by the commission on January 11, 2006, effective on February 1, 2006.

These changes will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state in a material way because they are adopted to ensure consistency between state and federal air quality permitting requirements and can be approved as revisions to the Texas SIP. The rulemaking action ensures that the rules will meet the requirements of the FCAA, which requires that the elements of the SIP are enforceable, include replicable elements, and ensure compliance and accountability. Specifically, the rules concern definitions for and other changes to the PAL rules, including the conditions for reopening PAL permits, and that excess emissions are

violations of the permit. The rulemaking also amends §116.617 to limit when existing registrations for this standard permit can be amended or renewed and provides the deadline for final registrations under this specific standard permit. This is intended to facilitate a smooth transition between this section and the new non-rule air quality standard permit adopted concurrently by the commission. The amendments would also remove obsolete references and make non-substantive administrative changes.

Additionally, even if the rules met the definition of a major environmental rule, the rulemaking does not meet any of the four applicability criteria for requiring a RIA for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rules would implement requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state.

While 42 USC, §7410, generally does not require specific programs, methods, or emission reductions in order to meet the standard, state SIPs must include specific requirements as specified by 42 USC, §7410. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. One of the requirements of 42 USC, §7410, is for states to include programs for the regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that the NAAQS are achieved, including a permit program as required in FCAA, Parts C and D, or NSR. Additionally, once states have developed SIPs, and those plans are approved by the EPA, the FCAA prescribes, in 42 USC, §7502(e), that the EPA, in modifying a NAAQS, shall promulgate rules that apply to all areas that have not attained the previous NAAQS that provide for controls that are no less stringent than the controls that previously applied to the area. This rulemaking will address those sections submitted as revisions to the NSR SIP and subsequently were disapproved by the EPA. Specifically, those concern definitions for

and other changes to the PAL rules, and that excess emissions are violations of the permit. The rulemaking project includes the withdrawal of sections applicable to permits required for compliance with FCAA, §112(g), from EPA consideration as a revision to the SIP; although, there are no changes to rule numbering or text and, thus, are not open for comment.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis, unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts, since the rules do not exceed the requirement to attain and maintain the NAAQS. For these reasons, the rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law, including the approved SIP. In addition, these rules do not exceed any contract between the state and a federal agency.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government

Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).)

The commission's interpretation of the RIA requirements is also supported by a change made to the Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The rules implement requirements of the FCAA, specifically to adopt and implement SIPs to attain and maintain the NAAQS, including a requirement to adopt and implement permit programs. The specific intent of the rulemaking is to address those sections submitted as revisions to the NSR SIP and subsequently were disapproved by the EPA. Specifically, those concern definitions for and other changes to the PAL rules, and that excess emissions are violations of the permit. The rulemaking would also limit when existing pollution control standard permit registrations can be amended or renewed and the deadline for final registrations under this specific standard permit. The rules were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the TCAA), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that

affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for this rulemaking action under the Texas Government Code, §2007.043. The primary purpose of this rulemaking action, as discussed elsewhere in this preamble, is to address those sections submitted as revisions to the NSR SIP and subsequently were disapproved by the EPA. Specifically, the changes concern definitions for and other changes to the PAL rules, limitations regarding use of pollution control standard permit registrations, and that excess emissions are violations of the permit.

The rules will not create any additional burden on private real property. 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 proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the

governmental action. Therefore, the rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)) The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). The rules will benefit the

environment by ensuring that certain state and federal permitting requirements are consistent to ensure protection of air quality. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 116 is an applicable requirement of 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, upon the effective date of the adopted rulemaking, revise their operating permit to include the new Chapter 116 requirements. Additionally, sources subject to the rules may become subject to the federal operating permit program.

PUBLIC COMMENT

The commission held a public hearing on September 20, 2010, and no comments were submitted. The comment period closed on September 27, 2010. The commission received written comments from an individual citizen, EAP, and the Texas Industry Project (TIP).

RESPONSE TO COMMENTS

TIP supported the revisions and clarifications to Chapter 116 that further the goal of

federally approvable rules.

The commission appreciates the TIP's support on this issue.

An individual citizen requested all existing permits, especially those related to oil and gas facilities, be subject to the rule changes.

This rulemaking implements the applicable elements of the major NSR and PAL permit programs and is at least as stringent as the federal rules and policies. The rulemaking action also ensures that TCEQ rules will meet the conditions of FCAA, §110, which requires that the elements of the SIP be enforceable, include replicable elements, and ensure compliance and accountability. Oil and gas facilities that are subject to the aforementioned programs will be required to comply with these revisions.

TIP commented that new rule language in §116.115, stating that emissions exceeding the maximum allowable emission rates are not authorized and are a violation of the permit, was redundant and, therefore, unnecessary. TIP also stated that this revision was unrelated to NSR reform and its presence in a SIP approved section of the rule opened a potential SIP gap.

The commenter is correct that this change is not directly related to EPA's disapproval notice. However, EPA regularly comments on the lack of similar language in permits. Therefore, this change assists with further ensuring that the permits that are issued, which are based on these rules, are enforceable. Both rules and permits must be enforceable for inclusion in the SIP. Although the commission is adding this text to a SIP-approved rule, which will now be subject to EPA review again, the commission expects that any gap resulting from commission adoption of the rule, until EPA review, will not result in any adverse effects. This is because the commission is confident that permits issued prior to this rule change are also enforceable.

TIP commented that existing TCEQ rules require all facilities that emit a PAL pollutant be included in the PAL permit. TIP also commented that EPA's lack of clarity on whether the Texas rules allow for emission caps that do not include all facilities at a major source lacks basis in the rules.

Although the commission's position is that the current language in §116.182(1) and §116.186 requires the applicant for a PAL to include all facilities that would be subject to the PAL permit to be included and the current practice of the Air Permit Division is to require all facilities that

emit the PAL pollutant to be included in the PAL permit, the commission is making further changes to this rule. The EPA in its September 15, 2010, final disapproval notice stated that §116.186 provides for an emission cap that may not account for all the emissions of a pollutant at a major stationary source. Additionally, EPA stated that §116.182(1) requires applicants to submit a list of facilities to be included in the PAL, such that not all facilities at the entire stationary source are specifically required to be included in the PAL. Due to the continuing confusion regarding this issue, the commission is making additional changes to the rule to add the phrase "that emit the PAL pollutant" and to remove the phrase "to be included in the PAL permit."

TIP commented that the inclusion of references to federal definitions for monitoring systems included in §116.186(c)(1) is inconsistent with definitions for monitoring systems found in other commission rules, notably those in Chapters 115 and 117. TIP stated that TCEQ should align all substantive definitions of these terms with existing definitions to avoid inconsistency and confusion among various programs and portions of the Texas rules. TIP also stated that TCEQ should add the proposed definitions to the general provisions of Chapter 101.

The commission has not changed the rule in response to this comment. TIP is correct that the commission referenced federal definitions of "continuous emission monitoring system" and "continuous parameter monitoring system" for use in §116.186(c)(1) and that the definitions in the proposed references are not the same as the definitions of "continuous monitoring", "CEMS", and "PEMS" in other TCEQ rule chapters such as 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, or Chapter 117, Control of Air Pollution from Nitrogen Compounds. Chapters 115 and 117 are rules intended to ensure that reasonably available control technology (RACT) is applied to new and existing sources in specific areas in order to help those areas achieve and maintain attainment with the ozone NAAQS. Those chapters also contain requirements that are more stringent than RACT as part of the TCEQ's ozone NAAQS attainment demonstrations. The objectives, control technology requirements, implementation strategy, and underlying rule language is necessarily different when comparing a federal NSR authorization program such as the PAL permits program, to rules such as those in Chapters 115 and 117. The definitions are more appropriate for use with the PAL permit program than are the existing definitions within Chapters 115 and 117. Revising the definitions in Chapters 115 and 117, or

establishing new definitions within Chapter 101 is beyond the scope of this rulemaking.

The EPA requested that TCEQ clarify that the references to BACT in §116.192(a) refer to federal BACT as defined in the FCCA.

The commission agrees with the comment and is changing §116.192(a)(1) and (4) to specifically state that the BACT equivalent required by the rule is federal BACT as identified in §116.160(c)(1)(A).

The EPA commented that §116.192(a) should be revised to clearly require all facilities contributing to an increase in emissions resulting in source's emissions equaling or exceeding its PAL are subject to PSD or NNSR.

The commission agrees with the comment and is changing §116.192(a)(2) to state clearly that all facilities contributing to an increase in emissions resulting in source's emissions equaling or exceeding its PAL are subject to major NSR review and specify that the authorization required shall be either a PSD or NNSR permit. This change will help ensure that this section of the rule is approvable into the SIP.

The EPA requested that §116.192(c) reference both 40 CFR §52.21(aa)(11) and §51.165(f)(11) in order to trigger applicability of PSD and NNSR.

The commission agrees with the comment and is changing §116.192(c)(1)(C) to include both references to the federal regulations to ensure the commission rules include adequate references to corresponding federal rules.

TIP commented that the revision to §116.601 does not directly relate to one of the EPA's stated bases for disapproving the rule and opens a new SIP gap.

The commission has made no changes in response to this comment. The adopted change to the rule removes citations to rules that are now obsolete, because EPA has either disapproved the rule (§116.617) or the rules have been not acted upon by EPA and, subsequently, withdrawn from EPA consideration by the commission due to being repealed (§116.620 and §116.621), and replaces those citations with generic language that the commission expects to be non-controversial and, therefore, should be approvable by EPA. While EPA did not comment in its disapproval (75 *Federal Register* 56423, September 15, 2010) of §116.617 that a reference to the rule elsewhere was an issue, it is clear that such a reference is now

inappropriate. Further, although the commission's current practice is to use its authority to adopt standard permits as non-rule standard permits, it wants to retain its option to adopt standard permits as rules in Chapter 116, Subchapter F. Any such standard permit would need to be submitted to EPA as a SIP revision. Therefore, the resulting SIP gap is not of such concern that the commission wants to retain a reference to rules that are not in the SIP or have been repealed.

The EPA supported the discontinuation of the pollution control standard permit by the commission's proposed changes to §116.617, but noted that many facilities may continue to rely on it and that these permits were not part of the federally approved TCEQ NSR SIP. The EPA also acknowledged the TCEQ's development of a non-rule pollution control standard permit. TIP commented that the revision to §116.617 to limit the use of the pollution control standard permit does not address EPA's disapproval of this authorization and the TCEQ should confirm that existing authorizations under this section of the rule are valid.

The TCEQ maintains its position that §116.617 is an efficient and legally supportable authorization for pollution control projects in Texas. The commission's position is that the authorizations that have been issued

under §116.617 prior to this change in the rule, and all other prior versions of this standard permit, remain valid permits.

The TCEQ has proposed a new non-rule PCP standard permit and has received comments from EPA regarding that proposal. The executive director will present his response to those comments to the commission for consideration of a new non-rule PCP standard permit.

The EPA commented that, although TCEQ was not submitting §116.617 as a SIP revision, it was submitting comments on §116.617 to assure that Texas' ongoing implementation of any pollution control standard permit was consistent with the basis for disapproval expressed in EPA's final disapproval notice (see September 15, 2010 (75 *Federal Register* 56424)).

On September 23, 2009, the EPA proposed disapproval of §116.617 (74 Federal Register 48467,), as adopted by the commission effective February 1, 2006. The amendments to §116.617 were adopted in 2006 to address prior comments from EPA after the opinion of the District of Columbia Circuit Court of Appeals in *New York v. EPA* (June 24, 2005), which ruled that EPA's rules that exempted pollution control projects from PSD review by defining "modifications" to exclude collateral emission increases associated

with those projects did not meet the requirements of the FCAA. Specifically, the amendments adopted in 2006 clarified that any project that constitutes a new major stationary source or major modification as defined in §116.12 is subject to the requirements of Chapter 116, Subchapter B, rather than the requirements of Chapter 116, Subchapter F. The commission appropriately interpreted the *New York* opinion to apply to the PSD permitting program and, therefore, made amendments to §116.617 to continue the program to assist with the efficient authorization method for installation of pollution control equipment for projects that do not trigger federal review.

The EPA acknowledged that §116.617 (as adopted in 2006) explicitly prohibits the use of the PCP Standard Permit for new major sources and major modifications; thus, addressing the court's decision in *New York v. EPA*. The EPA has not adopted any rules that provide detailed requirements for this type of permit, or any rules prohibiting it. In fact, the applicable rule in 40 CFR §51.160 is broadly written and has been interpreted by EPA to provide states discretion to tailor their own minor NSR permit programs. As noted earlier, the commission's standard permit program is part of the approved Texas SIP, and EPA has determined it meets 40 CFR Part 51. The commission is challenging the EPA's disapproval of §116.617.

SUBCHAPTER A: DEFINITIONS

§116.12

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (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 amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air

contaminants from a source or from an activity causing or resulting in the emission of air contaminants; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and compliance with the commission's rules; THSC, §382.040, concerning Documents; Public Property, which provides that all information, documents, and data collected by the commission in performing its duties are state property; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various authorizations; THSC, §382.0512, concerning Modification of Existing Facility, which prescribes how the commission will evaluate modifications of existing facilities; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling and monitoring of a permitted federal source or facility; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; and THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits. The amendment is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify

the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.040, 382.051, 382.0511 - 382.0515, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.12. Nonattainment and Prevention of Significant Deterioration Review Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms that are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits and Prevention of Significant Deterioration Review); and Chapter 116, Subchapter C, Division 1 of this title (relating to Plant-Wide Applicability Limits), have the following meanings, unless the context clearly indicates otherwise.

(1) **Actual emissions**--Actual emissions as of a particular date are equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during the 24-month period that precedes the particular date and that is representative of normal source operation, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plant-wide applicability limit. Instead, paragraph (3) of this section relating to baseline actual emissions shall apply for this purpose. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **Allowable emissions**--The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards specified in 40 Code of Federal Regulations Part 60 or 61;

(B) the applicable state implementation plan emissions limitation including those with a future compliance date; or

(C) the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

(3) **Baseline actual emissions**--The rate of emissions, in tons per year, of a federally regulated new source review pollutant.

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(B) For an existing facility (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the facility actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received for a permit. The rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply with the exception of those required under 40 Code of Federal Regulations Part 63, had such major stationary source been required to comply with such limitations during the consecutive 24-month period.

(C) For a new facility, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and for all other purposes during the first two years following initial operation, shall equal the unit's potential to emit.

(D) The actual average rate shall be adjusted downward to exclude any non-compliant emissions that occurred during the consecutive 24-month period. For each regulated new source review pollutant, when a project involves multiple facilities, only one consecutive 24-month period must be used to determine the baseline

actual emissions for the facilities being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount. Baseline emissions cannot occur prior to November 15, 1990.

(E) The actual average emissions rate shall include fugitive emissions to the extent quantifiable**.** Until March 1, 2016, emissions previously demonstrated as resulting from planned maintenance, startup, or shutdown activities; historically unauthorized; and subject to reporting under Chapter 101 of this title (relating to General Air Quality Rules) shall be included to the extent that they have been authorized, or are being authorized.

(4) **Basic design parameters**--For a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit. The basic design parameters for any process unit that is not at a steam electric generating facility are

maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator shall consider the primary product or primary raw material when selecting a basic design parameter. The owner or operator may propose an alternative basic design parameter for the source's process units to the executive director if the owner or operator believes the basic design parameter as defined in this paragraph is not appropriate for a specific industry or type of process unit. If the executive director approves of the use of an alternative basic design parameter, that basic design parameter shall be identified and compliance required in a condition in a permit that is legally enforceable.

(A) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter.

(B) If design information is not available for a process unit, the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(C) Efficiency of a process unit is not a basic design parameter.

(5) **Begin actual construction**--In general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(6) **Building, structure, facility, or installation**--All of the pollutant-emitting activities that belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are considered to be part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) **Clean coal technology**--Any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide

or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(8) **Clean coal technology demonstration project**--A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(9) **Commence**--As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(10) **Construction**--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(11) **Contemporaneous period**--For major sources the period between:

(A) the date that the increase from the particular change occurs; and

(B) 60 months prior to the date that construction on the particular change commences.

(12) ***De minimis* threshold test (netting)**--A method of determining if a proposed emission increase will trigger nonattainment or prevention of significant deterioration review. The summation of the proposed project emission increase in tons per year with all other creditable source emission increases and decreases during the contemporaneous period is compared to the significant level for that pollutant. If the significant level is exceeded, then prevention of significant deterioration and/or nonattainment review is required.

(13) **Electric utility steam generating unit**--Any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is included in determining the electrical energy output capacity of the affected facility.

(14) **Federally regulated new source review pollutant**--As defined in subparagraphs (A) - (D) of this paragraph:

(A) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the United States Environmental Protection Agency;

(B) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111;

(C) any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI; or

(D) any pollutant that otherwise is subject to regulation under the FCAA; except that any or all hazardous air pollutants either listed in FCAA, §112 or added to the list under FCAA, §112(b)(2), which have not been delisted under FCAA, §112(b)(3), are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under FCAA, §108.

(15) **Lowest achievable emission rate**--For any emitting facility, that rate of emissions of a contaminant that does not exceed the amount allowable under applicable new source performance standards promulgated by the United States Environmental Protection Agency under 42 United States Code, §7411, and that reflects the following:

(A) the most stringent emission limitation that is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation that is achieved in practice by a specific class or category of facilities, whichever is more stringent.

(16) **Major facility**--Any facility that emits or has the potential to emit 100 tons per year or more of the plant-wide applicability limit (PAL) pollutant in an attainment area; or any facility that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant in Table I of this section for nonattainment areas.

(17) **Major stationary source**--Any stationary source that emits, or has the potential to emit, a threshold quantity of emissions or more of any air contaminant (including volatile organic compounds (VOCs) for which a national ambient air quality standard has been issued. The major source thresholds are identified in Table I of this section for nonattainment pollutants and the major source thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations (CFR) §51.166(b)(1). A source that emits, or has the potential to emit a federally regulated new source review pollutant at levels greater than those identified in 40 CFR §51.166(b)(1) is considered major for all prevention of significant deterioration pollutants. A major stationary source that is major for VOCs or nitrogen oxides is considered to be major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 CFR §51.165(a)(1)(iv)(C).

(18) **Major modification**--As follows.

(A) Any physical change in, or change in the method of operation of a major stationary source that causes a significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant. At a stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified for a major source. At an existing major stationary source, the increase must equal or exceed that specified for a major modification to be significant. The major source and significant thresholds are provided in Table I of this section for nonattainment pollutants. The major source and significant thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations §51.166(b)(1) and (23), respectively.

Figure: 30 TAC §116.12(18)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT designation[1]	MAJOR SOURCE tons/year	SIGNIFICANT LEVEL[2] tons/year	OFFSET RATIO minimum

OZONE (VOC, NO_X)[3, 6]			
I marginal[7]	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1[4]
II serious	50	50	1.00 to 1[4]
SO_2	100	40	1.00 to 1[4]
PM_{10}			
I moderate	100	15	1.00 to 1[4]
II serious	70	15	1.00 to 1[4]
NO_X[5]	100	40	1.00 to 1[4]
Lead	100	0.6	1.00 to 1[4]

[1] Texas nonattainment area designations are specified in 40 Code of Federal Regulations §81.344.

[2] The significant level is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_X and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the major modification level listed in this table.

[3] VOC and NO_X are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. As

specified in §116.150 of this title, for El Paso County, the NNSR rules apply to sources of VOC, but not to sources of NO_X.

[4] The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO_X = oxides of nitrogen

NO_2 = nitrogen dioxide

CO = carbon monoxide

SO_2 = sulfur dioxide

PM_{10} = particulate matter with an aerodynamic diameter less than or equal to ten microns

[5] Applies to the NAAQS for nitrogen dioxide (NO_2).

[6] For the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for NNSR according to that area's one-hour standard classification, each application will be evaluated according to that area's one-hour standard classification. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

[7] For areas designated as nonattainment for ozone under Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), each application will be evaluated as if that area was designated as Marginal. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

(B) A physical change or change in the method of operation shall not include:

(i) routine maintenance, repair, and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act;

(iii) use of an alternative fuel by reason of an order or rule of 42 United States Code, §7425;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under this chapter;

(vi) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition that was established after December 21, 1976);

(vii) any change in ownership at a stationary source;

(viii) any change in emissions of a pollutant at a site that occurs under an existing plant-wide applicability limit;

(ix) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(x) for prevention of significant deterioration review only, the installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(xi) for prevention of significant deterioration review only, the reactivation of a clean coal-fired electric utility steam generating unit.

(19) **Necessary preconstruction approvals or permits**--Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the applicable state implementation plan.

(20) **Net emissions increase**--The amount by which the sum of the following exceeds zero: the project emissions increase plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases. Baseline actual emissions shall be used to determine emissions increases and decreases.

(A) An increase or decrease in emissions is creditable only if the following conditions are met:

(i) it occurs during the contemporaneous period;

(ii) the executive director has not relied on it in issuing a federal new source review permit for the source and that permit is in effect when the increase in emissions from the particular change occurs; and

(iii) in the case of prevention of significant deterioration review only, an increase or decrease in emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(B) An increase in emissions is creditable if it is the result of a physical change in, or change in the method of operation of a stationary source only to the extent that the new level of emissions exceeds the baseline actual emission rate. Emission increases at facilities under a plant-wide applicability limit are not creditable.

(C) A decrease in emissions is creditable only to the extent that all of the following conditions are met:

(i) the baseline actual emission rate exceeds the new level of emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) the executive director has not relied on it in issuing a prevention of significant deterioration or a nonattainment permit;

(iv) the decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(v) in the case of nonattainment applicability analysis only, the state has not relied on the decrease to demonstrate attainment or reasonable further progress.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(21) **Offset ratio**--For the purpose of satisfying the emissions offset reduction requirements of 42 United States Code, §7503(a)(1)(A), the emissions offset

ratio is the ratio of total actual reductions of emissions to total emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit.

(22) **Plant-wide applicability limit**--An emission limitation expressed, in tons per year, for a pollutant at a major stationary source, that is enforceable and established in a plant-wide applicability limit permit under §116.186 of this title (relating to General and Special Conditions).

(23) **Plant-wide applicability limit effective date**--The date of issuance of the plant-wide applicability limit permit. The plant-wide applicability limit effective date for a plant-wide applicability limit established in an existing flexible permit is the date that the flexible permit was issued.

(24) **Plant-wide applicability limit major modification**--Any physical change in, or change in the method of operation of the plant-wide applicability limit source that causes it to emit the plant-wide applicability limit pollutant at a level equal to or greater than the plant-wide applicability limit.

(25) **Plant-wide applicability limit permit**--The new source review permit that establishes the plant-wide applicability limit.

(26) **Plant-wide applicability limit pollutant**--The pollutant for which a plant-wide applicability limit is established at a major stationary source.

(27) **Potential to emit**--The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for a stationary source.

(28) **Project net**--The sum of the following: the project emissions increase, minus any sourcewide creditable emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Baseline actual emissions shall be used to determine emissions increases and decreases. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section.

(29) **Projected actual emissions**--The maximum annual rate, in tons per year, at which an existing facility is projected to emit a federally regulated new source review pollutant in any rolling 12-month period during the five years following the date the facility resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the facility's design capacity or its potential to emit that federally regulated new source review pollutant. In determining the projected actual emissions, the owner or operator of the major stationary source shall include unauthorized emissions from planned maintenance, startup, or shutdown activities, which were historically unauthorized and subject to reporting under Chapter 101 of this title, to the extent they have been authorized, or are being authorized; and fugitive emissions to the extent quantifiable; and shall consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state

or federal regulatory authorities, and compliance plans under the approved state implementation plan.

(30) **Project emissions increase**--The sum of emissions increases for each modified or affected facility determined using the following methods:

(A) for existing facilities, the difference between the projected actual emissions and the baseline actual emissions. In calculating any increase in emissions that results from the project, that portion of the facility's emissions following the project that the facility could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth may be excluded from the project emission increase. The potential to emit from the facility following completion of the project may be used in lieu of the projected actual emission rate; and

(B) for new facilities, the difference between the potential to emit from the facility following completion of the project and the baseline actual emissions.

(31) **Replacement facility**--A facility that satisfies the following criteria:

(A) the facility is a reconstructed unit within the meaning of 40 Code of Federal Regulations §60.15(b)(1), or the facility replaces an existing facility;

(B) the facility is identical to or functionally equivalent to the replaced facility;

(C) the replacement does not alter the basic design parameters of the process unit;

(D) the replaced facility is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable. If the replaced facility is brought back into operation, it shall constitute a new facility. No creditable emission reductions shall be generated from shutting down the existing facility that is replaced. A replacement facility is considered an existing facility for the purpose of determining federal new source review applicability.

(32) **Secondary emissions**--Emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or

modification that causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

(33) **Significant facility**--A facility that emits or has the potential to emit a plant-wide applicability limit (PAL) pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant.

(34) **Small facility**--A facility that emits or has the potential to emit the plant-wide applicability limit (PAL) pollutant in an amount less than the significant level for that PAL pollutant.

(35) **Stationary source**--Any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under 42 United States Code, §§7401 *et seq*.

(36) **Temporary clean coal technology demonstration project**--A clean coal technology demonstration project that is operated for a period of five years or

less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.115 and §116.127

STATUTORY AUTHORITY

The amendment and new section are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; TWC, §7.101, concerning Violation, which prohibits violation of a statute or rule within the commission's jurisdiction; and under Texas Health and Safety Code (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 amendment and new section are adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for

the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and compliance with the commission's rules; THSC, §382.040, concerning Documents; Public Property, which provides that all information, documents, and data collected by the commission in performing its duties are state property; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various authorizations; THSC, §382.0512, concerning Modification of Existing Facility, which prescribes how the commission will evaluate modifications of existing facilities; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling and monitoring of a permitted federal source or facility; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; and THSC, §382.0518, concerning Preconstruction Permit, which

authorizes the commission to issue preconstruction permits. The amendment and new section are also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The adopted amendment and new section implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.040, 382.051, 382.0511 - 382.0515, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.115. General and Special Conditions.

(a) General and special conditions. Permits, special permits, standard permits, and special exemptions may contain general and special conditions.

(b) General conditions. Holders of permits, special permits, standard permits, and special exemptions shall comply with the following:

(1) the general conditions contained in the permit document if issued or amended prior to August 16, 1994; or

(2) the following general conditions if the permit or amendment is issued or amended on or after August 16, 1994, regardless of whether they are specifically stated within the permit document.

(A) 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.

(B) Start-up notification.

(i) The permit holder shall notify the appropriate air program 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.

(ii) 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.

(iii) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the Office of Permitting 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).

(C) Sampling requirements.

(i) 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.

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

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

(D) 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 their use in fulfilling any requirements of the permit.

(E) Recordkeeping. The permit holder shall:

(i) 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;

(ii) 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;

(iii) make the records available at the request of personnel from the commission 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;

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

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

(vi) 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.

(F) 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." Emissions that exceed the maximum allowable emission rates are not authorized and are a violation of the permit.

(G) 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 §§101.201, 101.211, and 101.221 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; and Operational Requirements).

(H) Compliance with rules.

(i) 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 the Texas Clean Air Act and the conditions precedent to the granting of the permit.

(ii) 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.

(iii) Acceptance includes consent 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, special permits, standard permits, and special exemptions 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 Title 30 of the Texas Administrative Code.

(2) Special condition 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 under Subchapter F of this chapter (relating to Standard Permits); or

(ii) an exemption under Chapter 106 of this title (relating to Permits by Rule).

(B) Such 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 under:

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

(II) the provisions in Division 5 of this subchapter (relating to Nonattainment Review Permits) and Division 6 of this subchapter (relating to Prevention of Significant Deterioration Review).

§116.127. Actual to Projected Actual and Emissions Exclusion Test for Emissions.

(a) If projected actual emissions are used or emissions are excluded from the emission increase resulting from the project, the owner or operator shall document and maintain a record of the following information before beginning construction, and this information must be provided as part of the notification, certification, registration, or application submitted to the executive director to claim or apply for state new source review authorization for the project. If the emissions unit is an existing electric utility

steam generating unit, the owner or operator shall provide a copy of this information to the executive director before beginning actual construction:

(1) a description of the project;

(2) identification of the facilities of which emissions of a federally regulated new source review pollutant could be affected by the project; and

(3) a description of the applicability test used to determine that the project is not a major modification for any pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded from the project emissions increase and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If projected actual emissions are used to determine the project emission increase at a facility, the owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project at that facility and calculate and maintain a record of the annual emissions from that facility, in tons per year, on a calendar year basis for:

(1) a period of five years following resumption of regular operations after the change; or

(2) a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at that facility.

(c) If the facility is an electric utility steam generating unit, the owner or operator shall submit a report to the executive director within 60 days after the end of each calendar year of which records must be maintained documenting the unit's annual emissions during the calendar year that preceded submission of the report.

(d) If the facility is not an electric utility steam generating unit, the owner or operator shall submit a report to the executive director if the annual emissions from the project exceed the baseline actual emissions by a significant amount for that pollutant, and the emissions exceed the preconstruction projection for any facility. The report shall be submitted to the executive director within 60 days after the end of each calendar year. The report shall contain:

(1) the name, address, and telephone number of the major stationary source; and

(2) the calculated actual annual emissions.

(e) The owner or operator of the facility shall make the information required to be documented and maintained by this section available for review upon request for inspection by the executive director, local air pollution control program, and the general public.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (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 repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe

reasonable requirements for measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and compliance with the commission's rules; THSC, §382.040, concerning Documents; Public Property, which provides that all information, documents, and data collected by the commission in performing its duties are state property; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various authorizations; THSC, §382.0512, concerning Modification of Existing Facility, which prescribes how the commission will evaluate modifications of existing facilities; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling and monitoring of a permitted federal source or facility; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; and THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits. The repeal is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*.,

which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.040, 382.051, 382.0511 - 382.0515, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

SUBCHAPTER C: PLANT-WIDE APPLICABILITY LIMITS

DIVISION 1: PLANT-WIDE APPLICABILITY LIMITS

§§116.180, 116.182, 116.186, 116.188, 116.190, 116.192

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (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 amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016,

concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and compliance with the commission's rules; THSC, §382.040, concerning Documents; Public Property, which provides that all information, documents, and data collected by the commission in performing its duties are state property; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various authorizations; THSC, §382.0512, concerning Modification of Existing Facility, which prescribes how the commission will evaluate modifications of existing facilities; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling and monitoring of a permitted federal source or facility; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; and THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue

preconstruction permits. The amendments are also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.040, 382.051, 382.0511 - 382.0515, and 382.0518; and FCAA, 42 USC, §§7401 *et seq*.

§116.180. Applicability.

(a) The following requirements apply to a plant-wide applicability limit (PAL) permit.

(1) Only one PAL may be issued for each pollutant at an existing major stationary source.

(2) A PAL permit may include more than one PAL.

(3) A PAL permit may not cover facilities or emissions units at more than one existing major stationary source.

(4) A PAL permit may be consolidated with a new source review permit at the existing major stationary source.

(5) A PAL permit can be issued only for an existing major stationary source; it may not be issued for a new major stationary source as defined in 40 Code of Federal Regulations §51.165(iv)(A).

(b) The new owner of a major stationary source - shall comply with §116.110(e) of this title (relating to Applicability), provided that all facilities, or emissions units at a major stationary source, covered by a PAL permit change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a PAL permit alteration allocating the emission prior to the transfer of the permit by the commission. After the sale of a facility, or emissions unit at a major stationary source, but prior to the transfer of a permit requiring a permit alteration, the original PAL permit holder remains responsible for ensuring compliance with the existing PAL permit and all rules of the commission.

(c) The owner of the facility, emissions unit at a major stationary source, group of facilities, or account or the operator of the facility, emissions unit at a major stationary source, group of facilities, or account that is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) of this section.

§116.182. Plant-wide Applicability Limit Permit Application.

Any application for a new plant-wide applicability limit (PAL) permit or PAL permit amendment must be completed and signed by an authorized representative. In order to be granted a PAL permit or PAL permit amendment, the owner or operator of the proposed facility shall submit information to the commission that demonstrates that all of the following information is submitted:

(1) a list of all facilities, or emissions units at a major stationary source , that emit the PAL pollutant, including their registration or permit number , their potential to emit, and the expected maximum capacity. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

(2) calculations of the baseline actual emissions with supporting documentation;

(3) the calculation procedures that the permit holder proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month; and

(4) the monitoring and recordkeeping proposed satisfy the requirements of §116.186 of this title (relating to General and Special Conditions) for each PAL.

§116.186. General and Special Conditions.

(a) The plant-wide applicability limit (PAL) will impose an annual emission limitation in tons per year, that is enforceable for all facilities, or emissions units at a major stationary source, that emit the PAL pollutant . For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall demonstrate that the sum of the monthly emissions from each facility under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall demonstrate that the sum of the preceding monthly emissions from the PAL effective date for each

facility under the PAL is less than the PAL. Each PAL must include emissions of only one pollutant. The PAL must include all emissions, including fugitive emissions, to the extent quantifiable, from all facilities or emissions units at a major stationary source included in the PAL that emit or have the potential to emit the PAL pollutant.

(b) The following general conditions are applicable to every PAL permit.

(1) Applicability. This section does not authorize any facility to emit air pollutants but establishes an annual emissions level below which new and modified facilities, or emissions units at a major stationary source, will not be subject to major new source review for that pollutant.

(2) Sampling requirements. If sampling of stacks or process vents is required, the PAL permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission. The PAL permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(3) Equivalency of methods. The permit holder shall demonstrate 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 PAL permit. Alternative methods must be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(4) Recordkeeping and reporting.

(A) A copy of the PAL permit along with information and data sufficient to demonstrate continuous compliance with the emission caps contained in the PAL permit must be maintained in a file at the plant site and made available at the request of personnel from the commission or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information must be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information must include, but is not limited to, emission cap and individual emission limitation calculations based on a 12-month rolling basis and production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the PAL permit.

(B) The owner or operator shall retain a copy of the PAL permit application and any applications for revisions to the PAL, each annual certification of compliance under §122.146 of this title (relating to Compliance Certification Terms and Conditions), and the data relied on in certifying the compliance for the duration of the PAL plus five years.

(C) A semiannual report shall be submitted to the executive director within 30 days of the end of each reporting period that contains:

(i) the identification of owner and operator and the permit number;

(ii) total annual emissions (in tons per year) based on a 12-month rolling total for each month in the reporting period;

(iii) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(iv) a list of any facility modified or added to the major stationary source during the preceding six-month period;

(v) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken. This may be satisfied by referencing the PAL permit number in the semiannual report for the site submitted under §122.145 of this title (relating to Reporting Terms and Conditions);

(vi) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit; and

(vii) a signed statement by the responsible official, as defined in §122.10 of this title (relating to General Definitions), certifying the truth, accuracy, and completeness of the information provided in the report.

(D) The owner or operator shall submit the results of any revalidation test or method to the executive director within three months after completion of such test or method.

(5) Maintenance of emission control. The facilities covered by the PAL permit will 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.

(6) Compliance with rules. Acceptance of a PAL permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules and orders of the commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit. If more than one state or federal rule or PAL permit condition is applicable, the most stringent limit or condition will govern and be the standard by which compliance must be demonstrated. Acceptance includes consent 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 PAL permit.

(7) Effective period. A PAL is effective for ten years.

(8) Absence of monitoring data. A source owner or operator shall record and report maximum potential emissions without considering enforceable emission

limitations or operational restrictions for a facility during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit special conditions.

(9) Monitoring system requirements. Failure to use a monitoring system that meets the requirements of this section is a violation of the PAL permit.

(10) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the executive director. Such testing must occur at least once every five years after issuance of the PAL.

(11) Renewal. If a PAL renewal application is submitted to the executive director in accordance with §116.196 of this title (relating to Renewal of a Plant-wide Applicability Limit Permit), the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a renewed PAL permit is issued by the executive director or the application is voided.

(c) Each PAL permit must include special conditions that satisfy the following requirements.

(1) For the purposes of this subchapter, the definitions of the following terms are the same as those provided in 40 Code of Federal Regulations §51.165.

(A) Continuous emission monitoring system (CEMS).

(B) Continuous emissions rate monitoring system (CERMS).

(C) Continuous parameter monitoring system (CPMS).

(D) Predictive emissions monitoring system (PEMS).

(2) The PAL monitoring system must accurately determine all emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.

(3) The PAL monitoring system must employ one or more of the general monitoring approaches meeting the minimum requirements as described in subparagraphs (A) - (D) of this paragraph.

(A) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in, or created by, all materials used in or at the facility;

(ii) assume that the facility emits all of the PAL pollutant that is contained in, or created by, any raw material or fuel used in or at the facility, if it cannot otherwise be accounted for in the process; and

(iii) where the vendor of a material or fuel that is used in or at the facility publishes a range of pollutant content from such material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the executive director determines that there is site-specific data or a site-specific monitoring program to support another content within the range.

(B) An owner or operator using a CEMS to monitor PAL pollutant emissions shall meet the following requirements.

(i) The CEMS must comply with applicable performance specifications found in 40 Code of Federal Regulations Part 60, Appendix B.

(ii) The CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(C) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements.

(i) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the facility.

(ii) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes or at another less frequent interval approved by the executive director, while the facility is operating.

(D) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements.

(i) All emission factors must be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

(ii) The facility must operate within the designated range of use for the emission factor, if applicable.

(iii) If technically practicable, the owner or operator of a significant facility that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the executive director determines that testing is not required.

(E) An alternative monitoring approach must meet the requirements in paragraph (1) of this subsection and be approved by the executive director.

(4) Where an owner or operator of a facility cannot demonstrate a correlation between a monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the facility, the executive director shall:

(A) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) determine that operation of the facility during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

§116.188. Plant-wide Applicability Limit.

The plant-wide applicability limit (PAL) is the sum of the baseline actual emissions of the PAL pollutant for each existing facility at the source to be covered. The allowable emission rate may be used for facilities that did not exist in the baseline period. Baseline actual emissions from facilities that were permanently shut down after the baseline period must be subtracted from the baseline emissions rate.

(1) An amount equal to the applicable significant level for the PAL pollutant may be added to the baseline actual emissions when establishing the PAL.

(2) When establishing the PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions

for all existing facilities. However, a different consecutive 24-month period may be used for each different PAL pollutant.

(3) The executive director shall specify a reduced PAL level(s) in the PAL permit, to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement.

§116.190. Federal Nonattainment and Prevention of Significant Deterioration Review.

(a) An increase in emissions from operational or physical changes at a facility, or emissions unit at a major stationary source, covered by a plant-wide applicability limit (PAL) permit is insignificant, for the purposes of major new source review under this subchapter, if the increase does not exceed the PAL.

(b) At no time are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets, unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(c) A physical or operational change not causing an exceedance of a PAL is not subject to federal restrictions on relaxing enforceable emission limitations to avoid new source review.

§116.192. Amendments and Alterations.

(a) Any increase in a plant-wide applicability limit (PAL) must be made through amendment. Amendment applications must also include the information identified in §116.182 of this title (relating to Plant-wide Applicability Limit Permit Application) for new and modified facilities contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL and are subject to the public notice requirements under §116.194 of this title (relating to Public Notice and Comment).

(1) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small facilities, plus the sum of the baseline actual emissions of the significant and major facilities assuming application of federal best available control technology (BACT) (as identified in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements)) equivalent controls, plus the sum of the allowable emissions of the new or modified facilities exceeds the PAL. The level of control that

would result from federal BACT equivalent controls on each significant or major facility shall be determined by conducting a new federal BACT analysis at the time the application is submitted, unless the facility is currently required to comply with a federal BACT or lowest achievable emission rate (LAER) requirement that was established within the preceding ten years. In such a case, the assumed control level for that emissions unit shall be equal to the level of federal BACT or LAER with which that emissions unit must currently comply.

(2) The owner or operator shall obtain a major new source review permit under applicable provision of Subchapter B, Division 5 and Division 6 of this chapter (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review, respectively) for all facilities contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL, regardless of the magnitude of the emissions increase. These facilities shall comply with any emissions requirements resulting from the major new source review process.

(3) The PAL permit shall require that the increased PAL level be effective on the day any emission unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(4) The new PAL shall be the sum of the allowable emissions for each modified or new facility, plus the sum of the baseline actual emissions of the significant and major emissions units after the application of federal BACT equivalent controls as identified in paragraph (1) of this subsection, plus the sum of the baseline actual emissions of the small emissions units.

(b) Changes to PAL permits that do not require the PAL to be increased must be completed through permit alteration. Unless allowed in the PAL permit special conditions, the permit holder shall submit an alteration request prior to start of construction for physical modifications to facilities or installation of new facilities under the PAL. Approval must be received from the executive director prior to start of operation of the facilities if the emissions from the new or modified facilities may exceed 100 tons per year.

(c) Acceptance of a PAL permit is agreement by the permit holder for the executive director to reopen the PAL permit consistent with the requirements of §116.194 of this title for any actions in paragraphs (1) or (2) of this subsection.

(1) During the PAL effective period, the executive director shall reopen the PAL permit to:

(A) correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(B) decrease the PAL limit the owner or operator of the major stationary source creates creditable emissions reductions that meet the requirements of 40 Code of Federal Regulations (CFR) §51.165(a)(3)(ii) for use as offsets; and

(C) revise the PAL to reflect an increase in the PAL provided the owner or operator complies with the requirements of 40 CFR §52.21(aa)(11) and §51.165(f)(11).

(2) During the PAL effective period, the executive director may reopen the PAL permit for the following:

(A) revise the PAL to reflect newly applicable federal requirements (for example, New Source Performance Standards) with compliance dates after the PAL effective date;

(B) revise the PAL to be consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the state Implementation Plan; or

(C) reduce the PAL if the reviewing authority determines that a reduction is necessary to avoid causing or contributing to a National Ambient Air Quality Standard or Prevention of Significant Deterioration increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a federal land manager and for which information is available to the general public.

SUBCHAPTER F: STANDARD PERMITS

§116.601 and §116.617

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (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 amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the

emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants; THSC, §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures to be used in determining violations of and compliance with the commission's rules; THSC, §382.040, concerning Documents; Public Property, which provides that all information, documents, and data collected by the commission in performing its duties are state property; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits for construction of new facilities or modifications to existing facilities that may emit air contaminants; THSC, §382.0511, concerning Permit Consolidation and Amendment, which authorizes the commission to consolidate various authorizations; THSC, §382.0512, concerning Modification of Existing Facility, which prescribes how the commission will evaluate modifications of existing facilities; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling and monitoring of a permitted federal source or facility; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.05195, concerning Standard Permit, which authorizes the commission to issue a standard permit for new or existing similar facilities. The

amendments are also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.040, 382.051, 382.0511 - 382.0515, 382.0518, and 382.05195; and FCAA, 42 USC, §§7401 *et seq*.

§116.601. Types of Standard Permits.

(a) For the purposes of this chapter a standard permit is either:

(1) one that was adopted by the commission in accordance with Texas Government Code, Chapter 2001, Subchapter B, into this subchapter; or

(2) one that is issued by the commission in accordance with §116.603 of this title (relating to Public Participation in Issuance of Standard Permits).

(b) Any standard permit in this subchapter adopted by the commission shall remain in effect until it is repealed under the APA. If any adopted standard permit is

repealed and replaced, facilities may continue to be authorized until the date of registration required by subsection (e) of this section.

(c) A registration to use a standard permit adopted by the commission in this subchapter shall be renewed by the applicant under the requirements of §116.604 of this title (relating to Duration and Renewal of Registrations to use Standard Permits) by the tenth anniversary of the date of the original registration.

(d) If a standard permit in this subchapter adopted by the commission is repealed and replaced, with no changes, by a standard permit issued by the commission, any existing registration to use the repealed standard permit will be automatically converted to a registration to use the new standard permit, if the facility continues to meet the requirements. An automatically converted registration to use a standard permit shall be renewed by the applicant under the requirements of §116.604 of this title by the tenth anniversary of the date of the new registration.

(e) If a standard permit adopted by the commission in this subchapter is repealed and replaced with a standard permit issued by the commission, and the requirements of the standard permit are changed in the process, persons registered to use the repealed standard permit shall register to use the issued standard permit by the later of either the deadline established in the issued standard permit, or the tenth anniversary of the

original registration. The commission shall notify, in writing, all persons registered to use the repealed standard permit of the date by which a new registration must be submitted. Persons not wishing to register for the issued standard permit shall have the option of applying for or qualifying for other applicable authorizations in this chapter or in Chapter 106 of this title (relating to Exemptions from Permitting).

§116.617. State Pollution Control Project Standard Permit.

(a) Scope and applicability.

(1) This standard permit applies to pollution control projects undertaken voluntarily or as required by any governmental standard, that reduce or maintain currently authorized emission rates for facilities authorized by a permit, standard permit, or permit by rule.

(2) The project may include:

(A) the installation or replacement of emissions control equipment;

(B) the implementation or change to control techniques; or

(C) the substitution of compounds used in manufacturing processes.

(3) This standard permit must not be used to authorize the installation of emission control equipment or the implementation of a control technique that:

(A) constitutes the complete replacement of an existing production facility or reconstruction of a production facility as defined in 40 Code of Federal Regulations §60.15(b)(1) and (c); or

(B) the executive director determines there are health effects concerns or the potential to exceed a national ambient air quality standard criteria pollutant or contaminant that results from an increase in emissions of any air contaminant until those concerns are addressed by the registrant to the satisfaction of the executive director; or

(C) returns a facility or group of facilities to compliance with an existing authorization or permit unless authorized by the executive director.

(4) Prior to March 3, 2011, new or modified pollution control projects must meet the conditions of this standard permit. All previous standard permit

registrations under this section that were authorized prior to the effective date of this rule must include the increases and decreases in emissions resulting from those projects in any future netting calculation and all other conditions must be met upon the ten-year anniversary and renewal of the original registration, or until administratively incorporated into the facilities' permit, if applicable.

(5) Notwithstanding the requirements of §116.604 of this title (relating to Duration and Renewal of Registrations to Use Standard Permits), on or after March 3, 2011, no new or modified registrations will be accepted and no existing registrations will be renewed.

(b) General requirements.

(1) Any claim under this standard permit must comply with all applicable conditions of:

(A) §116.604(1) and (2) of this title (relating to Duration and Renewal of Registrations to Use Standard Permits);

(B) §116.605(d)(1) and (2) of this title (relating to Standard Permit Amendment and Revocation);

(C) §116.610 of this title (relating to Applicability);

(D) §116.611 of this title (relating to Registration to Use a Standard Permit);

(E) §116.614 of this title (relating to Standard Permit Fees); and

(F) §116.615 of this title (relating to General Conditions).

(2) Construction or implementation of the pollution control project must begin within 18 months of receiving written acceptance of the registration from the executive director, with one 18-month extension available, and must comply with §116.115(b)(2) and §116.120 of this title (relating to General and Special Conditions and Voiding of Permits). Any changes to allowable emission rates authorized by this section become effective when the project is complete and operation or implementation begins.

(3) The emissions limitations of §116.610(a)(1) of this title do not apply to this standard permit.

(4) Predictable maintenance, startup, and shutdown emissions directly associated with the pollution control projects must be included in the representations of the registration application.

(5) Any increases in actual or allowable emission rates or any increase in production capacity authorized by this section (including increases associated with recovering lost production capacity) must occur solely as a result of the project as represented in the registration application. Any increases of production associated with a pollution control project must not be utilized until an additional authorization is obtained. This paragraph is not intended to limit the owner or operator's ability to recover lost capacity caused by a derate, which may be recovered and used without any additional authorization.

(c) Replacement projects.

(1) The replacement of emissions control equipment or control technique under this standard permit is not limited to the method of control currently in place, provided that the control or technique is at least as effective as the current authorized method and all other requirements of this standard permit are met.

(2) The maintenance, startup, and shutdown emissions may be increased above currently authorized levels if the increase is necessary to implement the replacement project and maintenance, startup, and shutdown emissions were authorized for the existing control equipment or technique.

(3) Equipment installed under this section is subject to all applicable testing and recordkeeping requirements of the original control authorization. Alternate, equivalent monitoring, or records may be proposed by the applicant for review and approval of the executive director.

(d) Registration requirements.

(1) A registration must be submitted in accordance with the following.

(A) If there are no increases in authorized emissions of any air contaminant resulting from a replacement pollution control project, a registration must be submitted no later than 30 days after construction or implementation begins and the registration must be accompanied by a $900 fee.

(B) If a new control device or technique is authorized or if there are increases in authorized emissions of any air contaminant resulting from the pollution

control project, a registration must be submitted no later than 30 days prior to construction or implementation. The registration must be accompanied by a $900 fee. Construction or implementation may begin only after:

(i) no written response has been received from the executive director within 30 calendar days of receipt by the Texas Commission on Environmental Quality (TCEQ); or

(ii) written acceptance of the pollution control project has been issued by the executive director.

(C) If there are any changes in representations to a previously authorized pollution control project standard permit for which there are no increases in authorized emissions of any air contaminant, a notification or letter must be submitted no later than 30 days after construction or implementation of the change begins. No fee applies and no response will be sent from the executive director.

(D) If there are any changes in representations to a previously authorized pollution control project standard permit that also increase authorized emissions of any air contaminant resulting from the pollution control project, a registration alteration must be submitted no later than 30 days prior to the start of

construction or implementation of the change. The registration must be accompanied by a $450 fee, unless received within 180 days of the original registration approval. Construction or implementation may begin only after:

(i) no written response has been received from the executive director within 30 calendar days of receipt by the TCEQ; or

(ii) written acceptance of the pollution control project has been issued by the executive director.

(2) The registration must include the following:

(A) a description of process units affected by the project;

(B) a description of the project;

(C) identification of existing permits or registrations affected by the project;

(D) quantification and basis of increases and/or decreases associated with the project, including identification of affected existing or proposed emission points, all air contaminants, and hourly and annual emissions rates;

(E) a description of proposed monitoring and recordkeeping that will demonstrate that the project decreases or maintains emission rates as represented; and

(F) a description of how the standard permit will be administratively incorporated into the existing permit(s).

(e) Operational requirements. Upon installation of the pollution control project, the owner or operator shall comply with the requirements of paragraphs (1) and (2) of this subsection.

(1) General duty. The owner or operator must operate the pollution control project in a manner consistent with good industry and engineering practices and in such a way as to minimize emissions of collateral pollutants, within the physical configuration and operational standards usually associated with the emissions control device, strategy, or technique.

(2) Recordkeeping. The owner or operator must maintain copies on site of monitoring or other emission records to prove that the pollution control project is operated consistent with the requirements in paragraph (1) of this subsection, and the conditions of this standard permit.

(f) Incorporation of the standard permit into the facility authorization.

(1) Any new facilities or changes in method of control or technique authorized by this standard permit instead of a permit amendment under §116.110 of this title (relating to Applicability) at a previously permitted or standard permitted facility must be incorporated into that facility's permit when the permit is amended or renewed.

(2) All increases in previously authorized emissions, new facilities, or changes in method of control or technique authorized by this standard permit for facilities previously authorized by a permit by rule must comply with §106.4 of this title (relating to Requirements for Permitting by Rule), except §106.4(a)(1) of this title, and §106.8 of this title (relating to Recordkeeping).