The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendments to §§116.12, 116.111, 116.160, 116.610 and 116.611; and new §116.164, and §116.169.

Sections 116.12, 116.164, 116.169, 116.610, and 116.611 are adopted *with changes* to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7892). Sections 116.111 and 116.160 are adopted *without changes* to the proposed text and will not be republished.

The commission will submit the amendments to §§116.12, 116.111, 116.160, 116.610 and 116.611; and new §§116.164, and 116.169(a) to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

In *Massachusetts v. EPA* (549 U.S. 497 (2007)) the Supreme Court of the United States ruled that greenhouse gases (GHGs) fit within the Federal Clean Air Act (FCAA or Act) definition of air pollutant. This ruling gave EPA the authority to regulate GHGs from new motor vehicles and engines if EPA made a finding under FCAA, §202(a) that six key GHGs taken in combination endanger both public health and welfare, and that combined emissions of GHGs from new motor vehicles and engines contribute to pollution that endangers public health and welfare. EPA issued its "Endangerment Finding" for GHGs

0n December 15, 2009 (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, Final Rule, as published in the December 15, 2009, issue of the *Federal Register* (74 FR 66496)). Based on the Endangerment Finding, EPA subsequently adopted new emissions standards for motor vehicles (the "Tailpipe Rule" as published in the May 7, 2010, issue of the *Federal Register* (75 FR 25324)). The rule established standards for light-duty motor vehicles to improve fuel economy thereby reducing emissions of GHGs. The standards were effective January 2, 2011. EPA also reconsidered its interpretation of the timing of applicability of Prevention of Significant Deterioration (PSD) requirements under the FCAA (the "Timing Rule" as published in the April 2, 2010, issue of the *Federal Register* (75 FR 17004)). EPA's interpretation of the FCAA is that PSD requirements for stationary sources of GHGs take effect when the first national rule subjects GHGs to regulation under the Act. EPA determined that once GHGs were actually being controlled under any part of the Act they were subject to regulation under the PSD program. Specifically, EPA took the position that beginning on January 2, 2011, GHG control requirements would be required under the PSD and Title V permitting programs because national standards for GHGs under the Tailpipe Rule were effective on January 2, 2011.

EPA's regulation of GHGs under the FCAA presented substantial difficulties for the EPA and states, particularly with regard to the PSD program. For instance, the most common

of the GHGs, carbon dioxide (CO_2), is emitted in quantities that dwarf the Act's major source thresholds for program applicability. As a result, under EPA's Timing Rule, PSD requirements could have expanded from approximately 500 issued permits annually to more than 81,000 nationwide, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514, 31537 and 31538). To avoid this result, EPA excluded much of this new construction activity from the PSD program by altering the Act's statutory emission rate applicability thresholds for GHGs. This "Tailoring Rule," as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31514) newly defined the term "subject to regulation" and established higher GHGs emission thresholds for applicability of PSD and Title V permitting than specified in the FCAA. The Tailoring Rule also phased in permitting requirements in a multi-stepped process.

Before the *Massachusetts* decision in 2007, EPA took the position that GHGs are not regulated under the FCAA, and GHGs unquestionably were not regulated when EPA approved Texas' SIP in 1992. Texas has had an approved SIP since 1972, as published in the May 31, 1972, issue of the *Federal Register* (37 FR 10842). In 1983, Texas was delegated authority to implement the PSD program, as published in the February 9, 1983, issue of the *Federal Register* (48 FR 6023). Following this delegation, Texas submitted several SIP revisions to enable it to administer the PSD program (collectively the "PSD SIP submission"). EPA approved Texas' PSD SIP in 1992, granting the state full authority to implement the PSD program, as published in the June 24, 1992, issue of the

Federal Register (57 FR 28093).

The Texas PSD SIP submission and approval proceedings produced a well-developed record on how Texas would address the applicability of newly-regulated pollutants under the PSD program. During the SIP submission process, Texas consistently explained to EPA that the PSD provisions in the SIP are not prospective rulemaking, and do not incorporate future EPA interpretations of the Act or its regulations.

EPA's GHGs regulations created practical difficulties about how EPA could apply its Tailoring Rule in states with approved SIPs. In August 2010, Texas advised EPA that it could not retroactively reinterpret its SIP to cover GHGs, which were not regulated at the time Texas' SIP was approved in 1992 and were, in fact, a composite pollutant defined for the first time in the Tailoring Rule. Texas also explained that the PSD program only encompassed National Ambient Air Quality Standard (NAAQS) pollutants, but confirmed as a regulatory matter that the approved PSD program encompasses all federally regulated new source review (NSR) pollutants, including any pollutant that otherwise is subject to regulation under the FCAA, as stated in §116.12(14)(D).

Following promulgation of the Tailoring Rule, EPA issued a proposed "Finding of Substantial Inadequacy and SIP Call," as published in the September 2, 2010, issue of the *Federal Register* (75 FR 53892). This action proposed finding the SIPs of 13 states,

including Texas', "substantially inadequate" because these SIPs did not apply PSD requirements to GHGs-emitting sources. EPA proposed to require these states (through their SIP-approved PSD programs) to regulate GHGs as defined in the Tailoring Rule. EPA also proposed a Federal Implementation Plan (FIP) that would apply specifically to states that did not or could not agree to reinterpret their SIPs to impose the Tailoring Rule and did not meet SIP submission deadlines. EPA finalized its GHG SIP Call in the December 12, 2010, issue of the *Federal Register* (75 FR 77698) and required Texas to submit revisions to its SIP by December 1, 2011.

EPA published an interim final rule partially disapproving Texas' SIP; imposing the GHGs FIP effective as of its date of publication, as published in the December 30, 2010, issue of the *Federal Register* (75 FR 82430). EPA stated that FCAA, §110(k)(6) authorized it to change its previous approval of Texas' PSD SIP into a partial approval and partial disapproval. EPA's basis was that it had erroneously approved Texas' PSD SIP submission because the SIP did not appropriately address the applicability of newly-regulated pollutants to the PSD program in the future. EPA further stated that its action was independent of the GHG SIP Call because that action was aimed at a narrower issue of applicability to GHGs, whereas its decision retroactively disapproving Texas' PSD SIP submission was addressed to Texas' purported failure to address, or assure the legal authority for, application of PSD to all pollutants newly subject to regulation. EPA published the final rule retroactively disapproving Texas' PSD SIP in part and

promulgating the FIP as published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178).

The effect of EPA's FIP is that major source preconstruction permitting authority is divided between two authorities - EPA for GHGs and the state of Texas for all other pollutants. Currently, major construction projects and expansions in Texas that require PSD permits must file applications with both EPA Region 6 (for GHGs) and TCEQ (for all non-GHG pollutants).

House Bill (HB) 788, 83rd Legislature, 2013 added Texas Health and Safety Code (THSC), §382.05102. THSC, §382.05102 grants TCEQ the authority to authorize emissions of GHGs consistent with THSC, §382.051, to the extent required under federal law. THSC, §382.05102 directs the commission to adopt implementing rules, including a procedure to transition GHG PSD applications currently under EPA review to the TCEQ. Upon adoption, the rules must be submitted to EPA for review and approval into the Texas SIP. THSC, §382.05102 excludes permitting processes for GHGs from the contested case hearing procedures in THSC, Chapter 382; Texas Water Code (TWC), Chapter 5; and Texas Government Code, Chapter 2001. THSC, §382.05102 also requires that the commission repeal the rules adopted under this authority and submit a SIP revision to EPA, if (at a future date) emissions of GHGs are no longer required to be authorized under federal law.

The commission initiated this rulemaking to fulfill the directive from the legislature. The legislature found that "in the interest of the continued vitality and economic prosperity of the state, the Texas Commission on Environmental Quality, because of its technical expertise and experience in processing air quality permit applications, is the preferred authority for emissions of {GHGs}."

Texas has challenged in federal court EPA's GHG regulations as well as EPA's SIP Call and FIP. Implementation of HB 788 through this rulemaking is not adverse to Texas' claims in its ongoing challenges to EPA's actions regarding GHGs generally or relating to the SIP. The commission's action to conduct rulemaking for submittal and approval by EPA is consistent with Texas' position that state law does not give EPA the authority to automatically change state regulations.

The United States Supreme Court is currently considering Texas's challenge to EPA's authority to regulate stationary sources of GHGs under the FCAA. If the court issues a ruling that invalidates or renders unenforceable all or some of EPA's regulations of GHGs after adoption and submittal of these rules to EPA, the commission intends to follow the direction in THSC, §382.05102 to promptly repeal or amend the rules as necessary based on the court's order, and submit the changes or repeal to EPA to remove the provisions from the SIP.

Concurrently with this rulemaking, the commission is adopting revisions to Chapters 39 (Public Notice), 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment), 101 (General Air Quality Rules), 106 (Permits by Rule), and 122 (Federal Operating Permits Program) to implement HB 788. Except where specifically noted, all adopted changes to Chapters 39, 55, 101, 106, 116, and 122 are necessary to achieve the goal of implementation of HB 788, obtaining SIP approval of certain rules, and rescission of the FIP.

Section by Section Discussion

§116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions

The commission adopts amendments to §116.12 to add the definitions of carbon dioxide equivalent (CO_2e) emissions and the pollutant GHGs. The commission adopts amendments to the definitions of federally regulated NSR pollutant, major stationary source, and major modification.

The adopted definition of GHGs references the adopted definition in §101.1(42), Definitions, and establishes that the regulated pollutant GHGs is an aggregate group of six GHGs including: CO_2, nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). HFCs are compounds containing only hydrogen, fluorine, and carbon atoms. PFCs are compounds containing

only carbon and fluorine atoms. This definition is consistent with EPA's definition in 40 Code of Federal Regulations (CFR) §51.166(b)(48)(i). Other gases that are considered GHGs are not included in the definition of the pollutant GHGs.

The adopted definition in §116.12(7) of CO_2e emissions is consistent with EPA's definition in 40 CFR §51.166(b)(48)(ii). The new definition is necessary to establish the threshold for sources to be considered major for GHGs, consistent with EPA's Tailoring Rule. The CO_2e emissions are determined by multiplying the mass amount in tons per year (tpy) of emissions of each of the gases (that are included in the definition of the pollutant of GHGs) by the global warming potential (GWP) of the gas, and adding the results. The GWPs are published in the 40 CFR Part 98, Subpart A, Table A-1 - Global Warming Potentials. For example, a source emits 5 tpy CO_2, 25 tpy of CH_4, and 10 tpy of the hydrofluorocarbon trifluoromethane (CHF_3). The GWP of CO_2e is 1, the GWP of CH_4 is 25, and the GWP of CHF_3 is 14,800. The CO_2e of the source would be 148,630 tpy CO_2e. This value is reached by multiplying 5 tpy CO_2 times 1, 25 tpy CH_4 by 25, and 10 tpy CHF_3 by 14,800, then adding each result to total 148,630 tpy CO_2e.

The commission is not adopting EPA's deferral for CO_2 emissions from bioenergy and other biogenic sources as published in the July 20, 2011, issue of the *Federal Register* (76 FR 43490). The deferral expires July 21, 2014, and would not be in effect for GHG PSD permitting under the Texas SIP. Further discussion is included in the Response to

Comments section of this preamble.

The adopted amendment to the definition of federally regulated NSR pollutant in §116.12(15) will establish GHGs emitted over the federal Tailoring Rule thresholds as a pollutant subject to Texas' PSD permitting program.

Sources that emit GHGs are only subject to the PSD permitting program if they meet or exceed the thresholds adopted in new §116.164.

The new definition of GHGs in §116.12(16) establishes that the regulated pollutant GHGs is the aggregate group of six GHGs including: CO_2, N_2O, CH_4, HFCs, PFCs, and CF_6. This definition is consistent with EPA's definition in 40 CFR §51.166(b)(48). HFCs are compounds containing only hydrogen, fluorine, and carbon atoms. PFCs are compounds containing only carbon and fluorine atoms. Other gases that are commonly considered GHGs are not included in the definition of the pollutant GHGs.

The adopted amendment to the definition of "Major stationary source" and "Major modification" (in §116.12(19) and (20), respectively) reference adopted new §116.164 in order to simplify understanding of the thresholds established specifically for GHGs.

The commission also adopts the clarifying amendment to §116.12, including

renumbering to accommodate the new definitions; deleting the sentence, "The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas" because the definitions apply in attainment areas as well; and clarifying the title and citation of a referenced section in the footnote to Table I - Major Source/Major Modification Emission Thresholds.

§116.111, General Application

The commission adopts the amendment to §116.111 to add subsection (a)(2)(I)(ii) to establish the requirement to obtain authorization under the PSD permitting program for sources of GHGs which meet the thresholds in new §116.164. The amendment is necessary because the existing language in subparagraph (I) only requires PSD review in attainment areas. The amendment clarifies that authorization of GHGs above the tailored thresholds is required statewide. The amendment includes relettering subparagraph (I) to accommodate the two conditions which require PSD review. Consistent with current practice, the commission intends to issue a separate GHG PSD permit.

§116.160, Prevention of Significant Deterioration Requirements

The commission adopts the amendment to subsection (a) to require that new major sources of GHGs or major modifications of GHGs comply with the requirements of the PSD permitting program regardless of the location of the sources. The GHG PSD

permitting requirements are statewide because there is no NAAQS for GHGs. This is consistent with the federal PSD permitting regulations.

The adopted amendment to subsection (a) will result in the applicable PSD requirements applying to sources that emit GHGs above the thresholds in §116.164. The federal PSD rules, like the preconstruction requirements in the THSC, require a best available control technology (BACT) determination and an air quality analysis. As EPA's guidance on PSD permitting for GHGs indicates, the focus of the application review is on the control technology choice. EPA has recognized that the unique nature of emissions of GHGs and impacts present challenges to permitting authorities conducting PSD review for these emissions. For instance, EPA has indicated that no air quality analysis is required for GHG PSD permits. In "PSD and Title V Permitting Guidance for Greenhouse Gases," (dated March 2011) prepared by EPA's Office of Air Quality Planning and Standards, EPA stated that, "...monitoring for GHGs is not required because EPA regulations provide an exemption in 40 CFR §52.21(i)(5)(iii) and §51.166(i)(5)(iii) for pollutants that are not listed in the appropriate section of the regulations, and GHGs are not currently included in that list. However, 40 CFR §52.21(m)(1)(ii) and §51.166(m)(1)(ii) of EPA's regulations apply to pollutants for which no NAAQS exists. These provisions call for collection of air quality monitoring data 'as the Administrator determines is necessary to assess ambient air quality for that pollutant in any (or the) area that the emissions of that pollutant would affect.' In the case of GHGs, the exemption in 40 CFR §52.21(i)(5)(iii)

and §51.166(i)(5)(iii) is controlling since GHGs are not currently listed in the relevant paragraph. Nevertheless, EPA does not consider it necessary for applicants to gather monitoring data to assess ambient air quality for GHGs under 40 CFR §52.21(m)(1)(ii) and §51.166(m)(1)(ii), or similar provisions that may be contained in state rules based on EPA's rules. GHGs do not affect 'ambient air quality' in the sense that EPA intended when these parts of EPA's rules were initially drafted." A NAAQS for GHGs has not been established due to the extreme difficulty in determining what concentration level is requisite to protect public health and welfare. The uniformity of GHG concentrations throughout the ambient air also make localized impacts determinations problematic. Considering the nature of emissions of GHGs and their global impacts, EPA stated that it is not "practical or appropriate to expect permitting authorities to collect monitoring data for purpose of assessing ambient air impacts of GHGs."

Furthermore, consistent with EPA's statement in the Tailoring Rule, EPA stated, "...it is not necessary for applicants or permitting authorities to assess impacts from GHGs in the context of the additional impacts analysis or Class I area provisions of the PSD regulations for the following policy reasons. Although {it is EPA's position that emissions of GHGs} contribute to global warming and other climate changes that result in impacts on the environment, including impacts on Class I areas and soils and vegetation due to the global scope of the problem, climate change modeling and evaluations of risks and impacts of emissions of GHGs is typically conducted for changes in emissions orders of

magnitude larger than the emissions from individual projects that might be analyzed in PSD permit reviews. Quantifying the exact impacts attributable to a specific GHGs source obtaining a permit in specific places and points would not be possible with current climate change modeling. Given these considerations, emissions of GHGs would serve as the more appropriate and credible proxy for assessing the impact of a given facility. Thus, EPA believes that the most practical way to address the considerations reflected in the Class I area and additional impacts analysis is to focus on reducing emissions of GHGs to the maximum extent. In light of these analytical challenges, compliance with the best available control technology analysis is the best technique that can be employed at present to satisfy the additional impacts analysis and Class I area requirements of the rules related to GHGs." TCEQ intends to implement the GHG PSD permitting requirements consistent with the EPA's recognition of the unique nature of emissions of GHGs. The "PSD and Title V Permitting Guidance for Greenhouse Gases," (EPA-457/B-11-001 March 2011) guidance is available on the EPA's Web site: *http://www.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf*.

Further, because GHG emissions are typically non-toxic, relatively inactive and nonflammable, concentrations of GHGs high enough to produce health effects are extremely unlikely to be found in ambient air. Therefore, while health effects of GHG emissions will be evaluated consistent with the preceding statement when determining issuance of a GHG PSD permit, modeling or additional impacts review of GHGs will not

be conducted as part of the review of an application for a GHG PSD permit. In addition, it is not necessary to review individual emissions of GHGs for purposes of global effects on the climate because no numerical standard exists. As discussed elsewhere in this preamble, this is because of the inherent difficulty in determining: 1) the appropriate concentration level as well as; 2) localized impacts because of the uniformity of GHG concentrations throughout the ambient air. The impacts review for individual air contaminants will continue to be addressed, as applicable, in the state's traditional minor and major NSR permits program per Chapter 116.

The commission adopts subsection (b)(2) to include references to the netting requirements for applicability thresholds in §116.164 for GHGs. The amendment establishes the emission netting thresholds for GHGs which may cause an existing source to become subject to the PSD permitting program when the source is undergoing a modification. The subsection is relettered to clarify that the *de minimis* threshold test (netting) includes the threshold for GHGs on mass basis and CO_2e emissions for modifications of emissions of GHGs.

The commission amends subsection (c) to clarify that emissions of GHGs have the threshold specified in adopted new §116.164.

§116.164, Prevention of Significant Deterioration Applicability for Greenhouse Gases

Sources

The commission adopts new §116.164 to establish the specific PSD permitting major source thresholds for emissions of GHGs. Consistent with EPA's Tailoring Rule, emissions of GHGs at sources that emit or will emit GHGs must be evaluated on a mass basis and as CO_2e emissions. In new subsection (a), there are five circumstances which will require a source to conduct PSD review for emissions of GHGs. Two are considered by EPA as "anyway sources" or "anyway modifications" because they are subject to PSD permitting due to emissions of a regulated NSR pollutant that is not GHGs. In the rule language these two categories are §116.164(a)(1) and (2), respectively. Two categories are considered by EPA as "non-anyway sources" and "non-anyway modifications" because they are not subject to PSD permitting for a regulated NSR pollutant other than GHGs. In the rule language these categories are §116.164(a)(3) and (4), respectively. These sources will become subject to PSD permitting for GHGs as discussed in this preamble. The final category is existing sources that are not major for any pollutants. In the rule language this category is in §116.164(a)(5).

EPA's approach to regulating GHGs is that the emissions of GHGs (on a mass basis) must first meet or exceed the definition of a "major stationary source" in 40 CFR §52.21(b)(1)(i) (for EPA and delegated state air permit programs) or 40 CFR §51.166(b)(1)(i) (for approved state air permit programs). The Tailoring Rule established that emissions of CO_2e must meet or exceed the tailored thresholds established in the

federal definition of "subject to regulation" in 40 CFR §52.21(b)(49) and §51.166(b)(48). EPA details this approach in the preamble for the Tailoring Rule, as published in the June 3, 2010, issue of the *Federal Register* (75 FR 31523 and 31524), and page 9 of EPA's guidance (EPA-457/B-11-001 March 2011, PSD and Title V Permitting Guidance for Greenhouse Gases), available on EPA's Web site: *http://www.epa.gov/nsr/ghgdocs/ghgpermittingguidance.pdf*.

The EPA evaluated potential streamlining mechanisms as part of Step 3 of the Tailoring Rule. The commission intends to explore options to efficiently process GHG PSD applications. The commission has existing authority to establish a streamlined application review and permit issuance process for groups of sources, such as sources that belong to the same industrial source category, or that have common processes and equipment. The executive director has researched streamlining options presented in the FCAA Advisory Committee GHG Permit Streamlining Workgroup Final Report, available on EPA's Web site: *http://www.epa.gov/nsr/ghgdocs/20120914CAAACPermitStreamlining.pdf*. The commission will work with stakeholders during implementation of the GHG PSD permitting program to identify and develop appropriate streamlining options.

The first circumstance adopted in §116.164(a)(1) is a new major stationary source subject to the PSD permitting program because of emissions of one or more pollutants that are

not GHGs. EPA calls this category "new anyway sources" because these are major sources subject to PSD permitting for a pollutant that is not GHGs as defined in 40 CFR §51.166(b)(1). These sources became subject to PSD permitting for GHGs as a result of Step 1 of the Tailoring Rule (effective January 2, 2011) under 40 CFR §51.166(b)(48)(iv)(a). Additional information on this category can be found in Appendix A and in Table II-A, Summary of PSD Applicability Criteria for New Sources of GHGs, in EPA's guidance.

These sources must include GHGs in the PSD review if the source emits or has the potential to emit 75,000 tpy of CO_2e or more. For example, a new source is proposed that will have the potential to emit: 300 tpy of volatile organic compounds (VOC); 5,000 tpy CO_2; and 4,500 tpy CH_4. Under the existing PSD permitting program in Texas, this source is subject to PSD permitting because its emissions of VOC exceed the major source threshold in 40 CFR §51.166(b)(1). In addition, the emissions of GHGs must be evaluated against the threshold in §116.164(a)(1) to determine if the PSD review must include GHGs. In this example, the source will have a potential to emit 99,500 tpy CO_2e (multiply 5,000 tpy CO_2 by the GWP of 1, multiply 4,500 tpy CH_4 by the GWP of 25, and add the two results to get 117,500 tpy CO_2e). This source would be required to include emissions of GHGs in the PSD review because the source would emit greater than or equal to 75,000 tpy CO_2e.

The second circumstance adopted in §116.164(a)(2) is an existing major stationary source subject to the PSD permitting program because of emissions of a pollutant(s) that are not GHGs. EPA calls these "anyway modifications." These are major sources subject to PSD permitting for a pollutant that is not GHGs as defined in 40 CFR §51.166(b)(1). These sources became subject to PSD permitting for GHGs as a result of Step 1 of the Tailoring Rule under 40 CFR §51.166(b)(48)(iv)(b) when these sources will have a modification that results in an emissions increase of a regulated NSR pollutant and an emissions increase of CO_2e as defined in 40 CFR §51.166(b)(48)(iii). Because an emission rate for GHGs is not listed in 40 CFR §51.166(b)(23)(i), any GHGs emission rate greater than zero on a mass basis is considered significant, according to 40 CFR §51.166(b)(23)(ii). The modification must also meet the tailored threshold of 75,000 tpy CO_2e or more in 40 CFR §51.166(b)(48)(iv)(b). Therefore, if the project causes a significant net emissions increase for a non-GHG pollutant, then the project is a major modification for GHGs only if it also results in a net emissions increase for GHGs at or above the threshold in 40 CFR §51.166(b)(48)(iv)(b) as well. Additional information on this category can be found in Appendix C and in Table II-B, Summary of PSD Applicability Criteria for Modified Sources of GHGs, in EPA's guidance.

When the existing source has a major modification (as defined in §116.12) of a pollutant(s) that is not GHGs, the source must include GHGs in the PSD review if there is also a net emissions increase equal to or greater than 75,000 tpy CO_2e. For example, an

existing source major for PSD permitting is proposing changes in operation that would have the potential to emit net increases of: 450 tpy of nitrogen oxides (NO_X), 150 tpy of carbon monoxide (CO); 7,000 tpy CO_2; and 3,600 tpy CH_4. Under the existing PSD permitting program in Texas, this action meets the definition of a major modification for NO_X and CO, and those pollutants are subject to PSD review. In addition, the emissions of GHGs must be evaluated against the threshold in §116.164(a)(2) to determine if the PSD review must include GHGs. In this example, the source will have a potential to emit 97,000 tpy CO_2e (multiply 7,000 tpy CO_2 by the GWP of 1, multiply 3,600 tpy CH_4 by the GWP of 25, and add the two results to get 97,000 tpy CO_2e). This source would be required to include emissions of GHGs in the PSD review because the action meets the definition of a major modification in §116.12 for a federally regulated NSR pollutant that is not GHGs, and there would be a net emission increase of GHGs that exceeds zero tpy GHGs on mass basis, and 75,000 tpy CO_2e or more, as established in new §116.164(a)(2).

In another example for the second circumstance, an existing source major for PSD permitting (for non-GHGs) is proposing changes in operation that would have the potential to emit net increases of 35 tpy NO_X, 15 tpy CO, 1,000 tpy CO_2, and 3,700 tpy CH_4. The net emission increases of NO_X and CO do not meet the definition of a major modification in §116.12 because the proposed potential emissions of both NO_X and CO are below the significant levels in 40 CFR §51.166(b)(23). While the CO_2e emissions of the proposed modification are 93,500 tpy CO_2e, which is over the significant threshold

in §116.164, the emissions of GHGs are not subject to PSD review for this action because the source is not also undergoing a major modification for a federally regulated NSR pollutant that is not GHGs.

The third circumstance adopted in §116.164(a)(3) is a new stationary source that is major for GHGs only (these sources are minor for all non-GHGs pollutants). EPA calls these "non-anyway sources" because they are subject to PSD only because of emissions of GHGs. These sources became subject to PSD permitting for GHGs as a result of Step 2 of the Tailoring Rule under 40 CFR §51.166(b)(48)(v)(a). Additional information on this category can be found in Appendix B and in Table II-A in EPA's guidance.

These sources will be subject to the PSD permitting program for only GHGs if both the mass basis emissions of GHGs and the CO_2e emissions meet or exceed the thresholds in §116.164(a)(3). These sources must have mass basis emissions of GHGs that are greater than or equal to 250 tpy, or 100 tpy if the source is listed in 40 CFR §51.166(b)(1)(i). Additionally, these sources must meet or exceed the tailored threshold of 100,000 tpy CO_2e. If both of the thresholds are met, the source is subject to the PSD permitting program solely because of emissions of GHGs.

For example, a new proposed source would have the potential to emit 35 tpy NO_X, 20 tpy CO, 500 tpy CO_2, and 12 tpy of the perfluorocarbon perfluoropropane (PFC-218) with

the GWP of 8,830. The emissions of NO_X and CO are not over the major source thresholds for those pollutants. The mass basis for GHGs would be 512 tpy, which exceeds the 250 tpy threshold. The CO_2e emissions would be 106,460 tpy, which exceeds the 100,000 tpy threshold. This new source would be subject to PSD permitting solely because of emissions of GHGs. Since this source is not major for any pollutant other than GHGs (the emissions of NO_X and CO are not over the significant thresholds in 40 CFR §51.166(b)(23)), only the GHGs are subject to PSD review. All other pollutants would be subject to appropriate minor source authorization.

In another example for the third circumstance, a proposed new source would have the potential to emit 45 tpy NO_X, 15 tpy CO, 90 tpy CO_2, and 6 tpy SF_6 (the GWP of SF_6 is 22,800). The emissions of NO_X and CO are below the major source thresholds. The mass basis of emissions of GHGs is 96 (90 tpy CO_2 plus 6 tpy SF_6). While the CO_2e emissions are 136,890 tpy CO_2e, the source is not considered major for GHGs because the mass basis is not over the threshold of 100 tpy GHGs if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHG if the source is not on the list. Both the mass basis threshold and the tailored CO_2e threshold must be met or exceeded for the source to be considered a major source and subject to the PSD permitting program.

The fourth circumstance, adopted in new §116.164(a)(4), is an existing stationary source

that is major for GHGs and is proposing a major modification for GHGs. EPA calls these "non-anyway modifications." These sources became subject to PSD permitting for GHGs in Step 2 of the Tailoring Rule under 40 CFR §51.166(b)(48)(v)(b). These are existing sources that emit or have the potential to emit over the major source thresholds for GHGs. When the source will make changes that result in a net increase in emissions of GHGs above zero on a mass basis and greater than or equal to the tailored threshold of 75,000 tpy CO_2e in 40 CFR §51.166(b)(48)(v)(b), it becomes subject to PSD permitting. As previously noted, because GHGs are not listed in 40 CFR §51.166(b)(23)(i), any emission rate greater than zero is considered significant according to 40 CFR §51.166(b)(23)(ii). Additional information on this category can be found in Appendix D and in Table II-B in EPA's guidance.

These sources are existing major sources of GHGs if two thresholds are met or exceeded: the mass basis emissions of GHGs meet or exceed the defined threshold, and CO_2e meets or exceeds the tailored threshold. These sources must have mass basis emissions of GHGs that are greater than or equal to 250 tpy, or 100 tpy if the source is listed in 40 CFR §51.166(b)(1)(i). Additionally, these sources must meet or exceed the tailored threshold of 100,000 tpy CO_2e. These existing major sources are subject to the PSD permitting program when there is a physical change or change in method of operation that results in a net emissions increase of greater than zero tpy GHGs on a mass basis and greater than or equal to 75,000 tpy CO_2e. In the following example, an existing

source emits or has the potential to emit the following: 50 tpy NO_X, 30 tpy CO, 45 tpy SO_2, 5,000 tpy CO_2, 250 tpy CH_4, and 4 tpy SF_6. The source is currently a minor source in regard to criteria pollutants; however, the source is an existing major source in regard to GHGs. This is because the source currently has the potential to emit 5,000 tpy CO_2, 250 tpy of CH_4, and 4 tpy of SF_6. The total mass basis is 5,254 tpy GHGs. The GWP of CO_2 is 1, CH_4 is 25, and SF_6 is 22,800, so the source emits or has the potential to emit 125,450 tpy CO_2e emissions. Both the mass basis and tailored GHGs thresholds are exceeded. This source is considered a major stationary source for GHGs. If the source proposes a change in operation that affects emissions of GHGs, the next step would be to calculate the proposed net emissions increases that will result from the proposed change in operation. If the net emissions increase is greater than zero tpy of GHGs on a mass basis, and greater than or equal to 75,000 tpy CO_2e, then the emissions of GHGs will be subject to PSD review as part of a major modification.

In another example of the fourth circumstance, an existing source is authorized to emit the following: 500 tpy SO_2, 95,000 tpy CO_2, and 250 tpy CH_4. The source is currently a major source of SO_2 and GHGs. This source is proposing changes in operation that would have the potential to emit net increases of: 15 tpy SO_2, 70,000 tpy CO_2; and 500 tpy CH_4. The netted emission increases of SO_2 does not meet the definition of a major modification in §116.12 because the proposed potential emissions of SO_2 are below the significant levels in 40 CFR §51.166(b)(23). However, because the net emissions increase

is greater than zero tpy of GHGs on a mass basis, and greater than or equal to 75,000 tpy CO_2e (82,500 tpy CO_2e in this example), then the emissions of GHGs would be subject to PSD review as a major modification.

The fifth circumstance in adopted §116.164(a)(5) is an existing minor stationary source with emissions below the major source thresholds for all pollutants. This category of sources was not specifically addressed by EPA in the Tailoring Rule, however, an existing minor source that has a physical change or change in the method of operation that would constitute a major stationary source in and of itself is considered a new major stationary source and subject to PSD according to 40 CFR §51.166(b)(1)(i)(C). Additional information on this category can be found in Appendix D and Table II-B in EPA's guidance.

For example, the source has the potential to emit 20 tpy NO_X, 10 tpy CO, 0.5 tpy SO_2, and 90 tpy CO_2. The emissions of GHGs for this source are below both the mass basis threshold of 250 tpy (or 100 tpy if the source is on the named source category list), and under the tailored 100,000 tpy CO_2e threshold. The emissions of GHGs from this source would become subject to the PSD permitting program if the source proposed a change that would result in an emissions increase greater than or equal to 100,000 tpy CO_2e, and greater than or equal to 250 tpy GHGs (or 100 tpy GHGs, if the source is listed on the named source category list).

The commission adopts new §116.164(b) to clarify that emissions of GHGs at a new or modified facility that are below the thresholds in EPA's Tailoring Rule, as described by the conditions in §116.164(a), do not require preconstruction authorization, consistent with HB 788 and EPA's interpretation of GHG PSD permitting requirements. This is appropriate because EPA does not consider emissions lower than the tailored thresholds to be defined as "subject to regulation" and EPA does not require authorization of these emissions. The Texas Clean Air Act (TCAA) allows the commission to develop rules to establish a level of emissions for groups of facilities that do not require preconstruction authorization. In addition, emission increases below those thresholds resulting from a change at an existing permitted facility are not defined as a modification that requires preconstruction authorization under the TCAA. In order to demonstrate that emissions of GHGs from new or modified facilities or sources will not trigger PSD review, owners or operators must keep sufficient records to demonstrate authorization is not required for these emissions of GHGs. Records are required to be maintained for a minimum of five years. The commission intends to develop guidance to help smaller sources determine the type of records that are necessary to demonstrate compliance with this subsection. Sources will continue to be required to seek authorization for emissions from new or modified sources that are not GHGs.

§116.169, Greenhouse Gases Program Transitions

The commission adopts new §116.169 to fulfill requirements established in HB 788. This rule provides for the transition of certain PSD permitting applications which were previously submitted to EPA. Once EPA approves the SIP revisions and rescinds the FIP, the commission will accept the transfer of and review applications. The commission will work with EPA and applicants to determine if the commission or EPA will complete review of the application and issuance of a GHG PSD permit. Based on these discussions, TCEQ expects EPA will retain the authority to issue the PSD permits for those specific sources whose applications are not transferred to the TCEQ. Based on comments received, subsection (b) has been added to this section stating that GHG emissions are subject to the PSD permitting requirements of §116.164 unless a change occurs in federal law. Additionally, the title of this section has been modified to correctly identify this section.

§116.610, Applicability

The commission adopts the amendment to §116.610(a)(1) and (b) to clarify that sources of GHGs may use standard permits to authorize emissions of pollutants that are not GHGs. GHGs will not be authorized under standard permits. Instead, emissions of GHGs which meet or exceed the thresholds set in the EPA's Tailoring Rule are subject to the PSD permitting program. Sources subject to the PSD permitting program solely because of emissions of GHGs may continue to utilize standard permits to authorize emissions of

pollutants that are not GHGs, in conjunction with a PSD permit that authorizes GHGs, notwithstanding any rule language in a specific standard permit. Projects which trigger PSD requirements due to emissions of non-GHGs cannot qualify for a standard permit.

§116.611, Registration to Use a Standard Permit

The commission adopts the amendment to §116.611, which currently allows a source to begin construction 45 days after the executive director receives the registration for a standard permit. The adopted amendment to subsection (b) clarifies that sources which are subject to the PSD permitting program solely because of emissions of GHGs, and using a standard permit to authorize emissions of pollutants that are not GHGs, may not begin construction until the source is issued a GHG PSD permit.

The commission adopts the amendment to subsection (c) to establish a deadline for sources that are currently operating to certify emissions of GHGs. Since GHGs were not previously subject to permitting requirements, sources will have the opportunity to evaluate potential to emit GHGs and certify emissions, if necessary. These sources will have 12 months after EPA's final action approving the revisions to the Federal Operating Permits Program to certify emissions of GHGs to avoid applicability of Title V permitting. New sources of GHGs would be required to certify emissions no later than the date of operation.

Final Regulatory Impact Determination

The commission reviewed the adopted 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 in addition, 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 to Chapter 116 is to add six GHGs to the pollutants regulated under the commission's PSD permitting program and to establish the emissions thresholds for applicability of the program consistent with federal requirements in the final PSD and Title V GHG Tailoring Rule in the June 3, 2010, issue of the *Federal Register* (75 FR 31514).

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, §2001.0225(a). Texas Government, §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 adopted 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. 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. This rulemaking will implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of emissions of GHGs in Texas and to do so consistent with federal law. Specifically, amendments to Chapter 116 will add the following terms to nonattainment and PSD definitions: GHGs, and CO_2e emissions. The rulemaking will also amend definitions and the PSD rules in Subchapter B to subject GHGs to PSD permitting requirements at specific Tailoring Rule thresholds.

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 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 Legislative Budget Board, 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 adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and thus allow EPA to lift its federal permitting program on GHG sources in Texas. In fact, the rules create no additional impacts since major GHG sources in Texas must currently obtain a PSD permit from EPA and the adopted rules merely supplant EPA as the authority for GHG PSD permitting in Texas. 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.

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 Texas 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 adopted rules implement requirements of the FCAA, specifically to adopt and implement SIPs, including a requirement to adopt and implement permit programs. This rulemaking will implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of emissions GHGs in Texas and to do so

consistent with federal law. Specifically, amendments to Chapter 116 will add the following terms to nonattainment and PSD definitions: GHGs, and CO_2e emissions. The rulemaking will also amend definitions and the PSD rules in Subchapter B to subject GHGs to PSD permitting requirements at specific Tailoring Rule thresholds.

The rules were not developed solely under the general powers of the agency, but are authorized by specific sections of THSC, Chapter 382 (also known as the TCAA), which is cited in the Statutory Authority section of this preamble. Further, the rules do not exceed a standard set by federal law or 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. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the draftRIA determination during the public comment period. No comments were received on the RIA determination.

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 Texas Constitution §17 or §19, Article I; 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 the adopted rulemaking action under the Texas Government Code, §2007.043. The primary purpose of this rulemaking, as discussed elsewhere in this preamble, is to implement provisions in HB 788 to establish the TCEQ as the permitting authority for major sources of emissions of GHGs in Texas and to do so consistent with federal law. Specifically, amendments to Chapter 116 would add the following terms to nonattainment and PSD definitions: GHGs, and CO_2e emissions. The rulemaking will also amend definitions and the PSD rules in Subchapter B to subject GHGs to PSD permitting requirements at specific Tailoring Rule thresholds.

The adopted 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 rulemaking 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 the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted rules amend and update rules that govern the applicability of the PSD program to major sources of

GHG emissions. The CMP policy applicable to this rulemaking 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)). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

PSD is an applicable requirement under Chapter 122, Federal Operating Permits. This rulemaking affects the issuance or amendment of a PSD permit for major GHG sources, and therefore will result in new or revised federal operating permits for those sources.

Public Comment

The commission held a public hearing on December 5, 2013. The public comment period ended on December 9, 2013. The commission received comments from Air Alliance Houston (AAH), Association of Electric Companies of Texas Inc, (AECT); C3 Petrochemicals (C3P); Calpine Corporation (Calpine); Environment Texas; Gas Processors Association (GPA); Golden Pass Products LLC (Golden Pass); Golden Spread

Electric Cooperative, Inc. (GSEC); House Bill 788 Working Group (HB788WG); Jackson Walker L.L.P.; Lone Star Chapter of the Sierra Club (Sierra Club); Natgasoline, LLC; Occidental Chemical Corporation (OCC); OCI Beaumont, LLC; Pioneer Natural Resources (Pioneer); Public Citizen; State Representative Lon Burnam; Sustainable Energy and Economic Development Coalition (SEED); Texas Chemical Council (TCC); Texas Combined Heat and Power Initiative (TXCHPI); Texas Industry Project (TIP); Texas Oil and Gas Association (TXOGA); Texas Pipeline Association (TPA); Texas Solid Waste Association of North America (TxSWANA); Weaver Boos Consultants, LLC (Weaver); and Zephyr Environmental Corporation (Zephyr). This comprehensive list includes all of the commenters for all of the chapters of this concurrent rulemaking project. The individual comments are addressed in the Response to Comment section of the appropriate chapter. Eighteen of the commenters supported the rulemaking or portions of the rulemaking, six commenters opposed portions of the rulemaking, and 18 commenters suggested changes.

Response to Comments

30 TAC §116.12 Comments

Comment

HB788WG and TIP commented regarding the date of the table which lists GWPs which was incorporated in proposed §116.12(7) and §122.10(3). HB788WG commented that TCEQ should include in the final definition of CO_2e a reference to a specific version of

EPA's GWP table at 40 CFR Part 98, Subpart A, Table A-1. The commenter suggested including the January 2, 2014, effective date of the referenced table in the rule language. HB788WG commented that Texas permit holders should be provided the predictability and certainty afforded by GWP values that are set in rule, and that will not change absent changes to the TAC and the Texas SIP. TIP commented that the EPA's revisions to the GWP table were effective January 1, 2014, and that TCEQ's rule should reflect the most up-to-date GWP values as of the date of adoption.

Response

No change was made to the rule in response to these comments. The commission agrees that the proposed definition of CO_2e will reflect the most up-to-date version of the GWP Table in 40 CFR, Part 98, Subpart A, Table A-1. The state-federal partnership created by Congress in the FCAA, gives state and local governments the primary responsibility for air pollution control and prevention; and granted EPA responsibility to promulgate reasonable standards and regulations for the states to implement. Through the present and past rulemakings, TCEQ has accepted responsibility to implement FCAA permitting requirements in Texas. In several circumstances, the commission has chosen, by necessity, to incorporate certain EPA promulgated requirements and procedures, where a state action to effectuate future federal rule changes would be duplicative

(or redundant) and cause delays in permitting.

When EPA updates the GWPs, there is stakeholder participation and adequate notice given so applicants will have certainty regarding the appropriate GWPs. The GWPs are set at the federal level, so they will apply if TCEQ conducts rulemaking or not. This is consistent with the TCEQ's implementation of emission factors derived by EPA.

Furthermore, the legislature directed TCEQ to permit GHGs 'to the extent' these emissions require authorization under federal law. 40 CFR Part 98, Subpart A, Table A-1 is required to be used under federal PSD and Title V requirements for determining when tailored thresholds are triggered for new or modified major sources of GHG.

Comment

GPA, HB788WG, TIP, and TPA requested clarification regarding the commission's intent for GWPs that change in the future. HB788WG commented that TCEQ should provide certainty with regard to PSD applicability determinations based on potentially shifting GWP values in the preamble to the final rule. HB788WG and TIP requested TCEQ confirm the commission's intent regarding "retroactive" application of GWP values when calculating GHG PSD applicability for permit actions. HB788WG, TIP, and

TPA requested clarification on TCEQ's concurrence with EPA's intent as stated in the November 29, 2013, issue of the *Federal Register* (78 FR 71915 - 71916), "PSD permitting obligations should not be affected for a source or modification that has either already obtained a PSD permit or begun actual construction at a time when it was legitimately considered a source that did not require a PSD permit." GPA, TIP, and TPA commented that TCEQ should prevent a change in the GWPs from having a retroactive effect on a source's preconstruction authorization or synthetic minor certification.

Response

No change was made to the rule in response to these comments. The commission clarifies that changes to the GWP values will not require any retroactive review for previously issued preconstruction authorizations, and the commission concurs with the quote from EPA provided by the commenters. Once TCEQ becomes the permitting authority for GHG PSD, a source would obtain all preconstruction authorizations from a single permitting authority. Therefore, if a source is not subject to GHG PSD permitting according to §116.164 at the time the authorization for non-GHG emissions is issued, a subsequent change in the GWPs would not require GHG PSD permitting. The GHG PSD applicability in adopted §116.164(a) relies on an action taken by the owner or operator, such as applying for authorization for new construction or a modification of an existing source.

Applicability of the Title V program is based on the definition of major source in §122.10(14)(H). The Title V threshold is based on potential to emit, and is not dependent on construction or modification undertaken by an owner or operator. If the GWPs change, the owner or operator must evaluate their potential to emit with the revised GWPs. Changes to GWPs could affect a source's certification below Title V thresholds under §116.611 and §122.122. Depending on the limits in the certification, a GWP change could result in the need to revise the certification. For example, if an owner or operator of a source certifies to a limit in tpy of CO2e, and the GWP change would result in an exceedance of the certified limit, a revised certification may be needed. Sources with emissions of GHGs that exceed the major source threshold in §122.10(14)(H) would be required to apply for a Title V permit.

Comment

GPA and TIP commented that existing permit conditions with CO2e limitations (which were based on prior GWP values) should continue to use the GWPs that were in effect when the permit was issued. GPA suggested that updating permit conditions should be considered an administrative change that should not require public notice and comment. TIP commented that some EPA-issued permits specify the GWPs to be used to determine

compliance with the permit. GPA commented that existing permit conditions expressed in CO2e emissions could be updated in periodic Title V renewals by a simple ratio of the new GWP to the prior-GWP.

Response

No change was made to the rule in response to these comments. The commission clarifies that, consistent with the current policy applied to changes in emission factors, updates to reflect new GWPs in emission limits expressed as CO2e could be updated as a correction to a previously issued GHG PSD permit, at the applicant's request. Corrections conducted because EPA changed GWP values would not be considered modifications because they are not a physical or operational change, and would not be subject to public notice requirements.

The Title V permit cannot be used as a mechanism to change any existing permit conditions or limitations in a GHG PSD (or any NSR) permit. However, changes to GHG PSD permits or applicable requirements may result in the need to revise the Title V permit.

Comment

GPA commented that changes in GWPs could be treated the same as changes to emission

factors in AP-42. GPA commented that at TCEQ's January 15, 2013, Annual Emissions Inventory Workshop, TCEQ staff indicated that changes in AP-42 factors should not be retroactively applied. The commenter quoted the example, "AP-42 factor was updated in June 2012. Do not use the updated AP-42 factor to determine emissions for the 2011 {emissions inventory questionnaire}. Updated AP-42 factor can be used for the 2012 inventory." GPA commented that TCEQ has long taken the position that, where previously unknown emissions or emission sources are discovered at existing plant sites, TCEQ uses the rules that were in effect at the time the source was constructed or modified in determining whether the source is subject to federal PSD or nonattainment rules (Interoffice memorandum from Ruben Herrera, P.E., through John Steib, Air Permits Division Director, to NSR Engineers (July 5, 2000)). GPA commented these practices support by analogy the position that changes in GWP factors should not be applied retroactively to alter the permitting status of an existing source.

Response

No change was made to the rule in response to this comment. The commission clarifies that the requirements for emissions inventory reporting are not necessarily the same for air permitting.

If previously unknown emissions or emission sources are discovered at existing plant sites, the PSD rules that were in effect at the time the source

was constructed would be used to determine PSD applicability. However, consistent with TCEQ's long-standing practice for non-GHGs, the emission calculations would be based on the most current EPA-derived emission factors, or source-specific factors if justified, to determine if PSD applies. Therefore, the GWPs in EPA rule would be used to determine GHG PSD applicability following the GHG rules in effect when the emissions were identified. If an owner or operator determines these sources were not subject to GHG PSD permitting, records should be kept according to §116.164(b).

Additionally, if the GWPs change while TCEQ is conducting the GHG PSD review of the application, the commission will work with applicants to ensure that the final permit is based on the most up-to-date GWPs.

Comment

Sierra Club and TCC commented that the exception for biogenic emissions proposed in §116.12(7)(B) should be removed from the rule language. Sierra Club commented that the exception would have little practical effect because of the July 21, 2014, expiration date. Sierra Club also commented that facilities using organic material should be subject to the same rules as other industries when it comes to GHG PSD permits. TCC and TIP commented that the District of Columbia Circuit Court struck down the federal biomass

deferral rule on July 12, 2013, in Center for Biological Diversity, *et al*. v. EPA, No. 11-1101. (*Center for Biological Diversity v. EPA*, No. 11-1101 & consolidated cases (D.C. Cir. Jul. 12, 2013.)). TCC commented that TCEQ should either remove this clause from the rule, or provide that this portion will sunset if a final non-appealable judgment vacates EPA's biomass deferral rule.

TIP commented that unless that July 12, 2013, court decision is superseded, it appears that EPA may lack a legal basis to approve a rule that includes a deferral for biomass CO_2 emissions. TIP recommended that the proposal be amended to provide that the biomass deferral will sunset if a final, non-appealable judgment by a court of competent jurisdiction vacates the EPA's biomass deferral rule. Alternatively, TIP suggested the biomass deferral not be included as part of the SIP revisions. TXOGA commented that the exception for biogenic emissions should only apply to the extent required by federal regulation. TXOGA suggested that TCEQ provide an adequate opportunity for notice and comment before taking state action to promulgate such an exception if not federally required. Environment Texas commented that the rule should include a provision on how the emissions from biogenic sources will be determined after expiration date of July 21, 2014.

Zephyr commented that the language in §116.12(7)(B) forces the exclusion of biogenic derived GHGs, instead of simply allowing for their disuse. Zephyr commented that this

would result in the lowering of historic baselines, penalizing applicants that have been making the effort to use renewable fuel sources. Zephyr suggested changing "shall" to "may" in §116.12(7)(B), and requested clarification that after July 21, 2014, the baseline actuals do not need to exclude these emissions. Zephyr also requested adding language to extend the deadline if EPA extends the date based on the promised study of bio fuels.

TxSWANA commented in support of the biogenic CO_2 exclusion. Additionally, TxSWANA commented that the TCEQ should consider adding rule language making it clear that, if EPA creates a permanent biogenic CO_2 exclusion, it would become permanent in Texas without the need for further rulemaking.

Response

The commission has changed the rules in §116.12(7)(B) and §122.10(3)(B) in response to these comments. The commission has removed the proposed biomass exclusion from the adopted definition of CO_2e. As several commenters stated, the United States Court of Appeals for the District of Columbia Circuit recently vacated the biomass deferral included in federal rule (*Center for Biological Diversity v. EPA*, No. 11-1101 and consolidated cases). The deferral language that was vacated is identical to the proposed exclusion in the definitions. The Circuit Court's ruling is abated pending a decision by the United States Supreme Court on the main GHG rules

(*Utility Air Regulatory Group v. EPA*, S. Ct. Nos. 12-1146, *et al*), meaning the biomass deferral is not formally vacated and subject to appeal. EPA has not indicated that it will appeal the Circuit Court's decision. However, in EPA's parallel processed proposal on the SIP rules, EPA has indicated it will take no action on §116.12(7)(B) in the February 18, 2014, issue of the *Federal Register* (79 FR 9123). Therefore, the deferral for biomass emissions in CO_2e calculations will not be in effect for GHG PSD permitting under the Texas SIP.

Regardless of whether EPA decides to appeal and regardless of EPA's proposal on the SIP approval of the adopted rules in this rulemaking, the deferral in §116.12(7)(B) is set to expire July 21, 2014. The commission expects that EPA will approve these GHG PSD program rules as adopted into the SIP and lift the FIP soon after the rules are adopted. The timing of the EPA's SIP and FIP actions may be approximately the same time as the biomass deferral expiration. TCEQ cannot issue GHG PSD permits until the FIP is lifted and therefore this exclusion will likely expire and be unavailable to permit applicants. Therefore, the commission has removed the biomass deferral language from Chapter 116 and Chapter 122.

Comment

TIP commented about potential implications for an EPA promulgated new source performance standard (NSPS) and the definition of "federally regulated new source review pollutant" in §116.12. TIP commented that paragraph (B) of the definition provides that a federally regulated NSR pollutant includes "any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111." TIP commented that if EPA finalizes an NSPS for GHG emissions, an argument could be raised that GHGs are "subject to any standard promulgated under Federal Clean Air Act (FCAA), §111." TIP requested that TCEQ clarify that the proposed rule amendments will avoid a situation in which EPA promulgation of an NSPS for GHG emissions causes all GHG emissions to become subject to permitting under Texas law. TIP requested that the TCEQ provide clarification that its definition of "Federally regulated new source review pollutant" will not result in a situation where GHG emissions require authorization below the PSD permitting thresholds in proposed §116.164. TIP recommended adding the language "For greenhouse gases, notwithstanding subparagraph (15)(B),..." to §116.12(15)(E).

Response

The commission has changed the rule in response to this comment. In the most recent proposal for GHG NSPS for new electric generating units, EPA reiterates its previous interpretation that "the Tailoring Rule thresholds continue to apply even when the EPA promulgates the first NSPS for

GHGs..." as published in the January 8, 2014, issue of the *Federal Register* (79 FR 1430, 1488). EPA requested comment from states whether they can interpret their SIPs to apply the Tailoring Rule thresholds to the NSPS prong of the definition of "regulated NSR pollutant" or whether their respective SIPs must be revised. TCEQ has not yet commented on this proposal and Texas SIP rules relating to GHG PSD permitting at tailored thresholds have yet to be approved by EPA. Nevertheless, the commission interprets the proposed rules in Chapter 116 to apply the tailored thresholds (as adopted in §116.164) to major sources even if a GHG NSPS is finally promulgated. However, given that these thresholds are not contained in the definition section of Chapter 116, the commission is further clarifying this interpretation by adding language to the NSPS prong of the definition of "Federally regulated new source review pollutant" in §116.12(15) so that it will read: "(B) Except for greenhouse gases any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111." The new language does not exempt GHGs from regulation under the PSD program. The additional language in subparagraph (B) maintains that GHGs that may ultimately be subject to FCAA, §111 standard will be regulated under PSD at the Tailoring Rule thresholds consistent with EPA interpretation and rule.

Comment

Pioneer, TXOGA, and Zephyr suggested a revision to the definition of major stationary source in proposed §116.12(19). The commenters suggested adding a phrase "or greenhouse gases" so the definition would read, "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, or greenhouse gases." The commenters suggested the edit because there is not a NAAQS for GHGs.

Response

The commission has changed the rule in response to this comment. Adding the phrase "or greenhouse gases" clarifies the commission's intent that a source can be considered a "major stationary source" based on emissions of GHGs, without regard to an established NAAQS, as consistent with federal law.

30 TAC §116.111 Comments

Comment

TPA commented that revisions may be needed in §116.111(a)(2)(J) to ensure clarity regarding the agency's intention regarding requirements for air dispersion modeling for GHG PSD permits. TPA commented that paragraph generally provides that

computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a project. TPA commented that there is no limitation within that paragraph to exclude GHG emissions from the requirement. TPA suggested additional language be added the rule: "...provided however that air dispersion modeling may not be required for any gas listed in §101.1(42) of this title unless the gas is also listed in §101.89(A) of this title, and then only if the modeling is conducted for a purpose other than assessing impact on climate change or global warming conditions..." TPA commented that it may be appropriate for gases with an established RQ to be modeled for specific health or environmental impacts, but in no event would it be appropriate to conduct modeling of any of the GHG component gases for generalized global warming or climate change purposes.

Response

No change has been made to the rule in response to this comment. Section §116.111(a)(2)(J) provides the executive director the discretion to require an applicant to conduct modeling. It is not the TCEQ's practice to amend the rule to exclude specific regulated pollutants (or pollutants possibly subject to regulation) from an air dispersion modeling demonstration. The TCEQ does not intend to require air dispersion modeling for GHG emissions, with the possible exceptions as noted in the commenter's description: "if the modeling is conducted for purposes other than assessing impact on climate

change or global warming conditions."

30 TAC §116.160 Comments

Comment

Representative Lon Burnam, AAH, Environment Texas, Sierra Club, Public Citizen, and SEED requested a process for public input in BACT determinations. Representative Burnam suggested meetings every two years to set BACT emission limit standards. Representative Burnam commented that the biannual reviews could address only the top 25 major stationary sources emitting GHGs for purposes of administrative efficiency. AAH and Sierra Club suggested annual stakeholder meetings. Environment Texas suggested an initial round of meetings and then a biannual or annual review to establish BACT for the most common or largest sources of emissions of GHGs. Public Citizen suggested monthly meetings to determine BACT for different industries or processes. Public Citizen and SEED suggested annual meetings.

Response

As discussed elsewhere in the Response to Comments section of this preamble, BACT reviews will be conducted in a manner consistent with how PSD BACT reviews for other pollutants are currently reviewed. Stakeholders will have opportunity to comment on the BACT proposed by an applicant and on the BACT proposed by the executive director in the

draft permit, according to the SIP-approved public participation rules in Chapter 39 and Chapter 55.

Comment

AECT commented that the preamble for Chapter 116 states that the scope of review for GHG PSD applications will be limited to BACT determination for GHG, and that none of the air quality analyses that are specified in the PSD rules must be conducted for GHGs during the PSD review. AECT requested that TCEQ add rule language to §116.160 that states that the scope of review for GHG PSD permit applications will be limited to the BACT determination for GHGs, to provide both TCEQ and GHG PSD permit applicants a clear and strong foundation to rebut assertions by protestants that air quality analyses should be required.

Response

No change has been made to the rule in response to this comment. Section 116.111(a)(2)(I)(ii) requires new or modified sources of GHGs that trigger PSD comply with applicable PSD review requirements. The commission is utilizing EPA's current published interpretation regarding air quality analyses for emissions of GHGs. The suggested rule language is not necessary because there is no NAAQS set for GHGs, and the technology does not exist to evaluate local impacts. Therefore, an air quality analysis is not

required for GHG PSD permit applications and is thus not an "applicable" element of PSD review, as stated in §116.111.

Comment

AECT requested clarification regarding the method to be used to conduct the BACT analysis for GHG PSD applications. AECT commented that EPA's "top down" BACT review process is not necessary for GHG PSD applications because EPA approved the TCEQ PSD permitting rules as part of the Texas SIP in the June 24, 1992, issue of the *Federal Register* (57 FR 28093-28098).

Environment Texas and Sierra Club suggested that TCEQ incorporate EPA's five-step "top down" BACT analysis method for GHG PSD permits.

Response

No change was made to the rule in response to these comments. The commission clarifies that BACT reviews for GHG PSD permits will be conducted in the manner consistent with how PSD BACT reviews for other pollutants are currently reviewed. The Air Permit Reviewer Reference Guide for Air Pollution Control (APDG 6110v2 01/2011) describes the BACT review process. The TCEQ uses a three-tier approach to evaluate the BACT proposals in minor NSR air permit applications. EPA has agreed to accept

the three-tier approach as equivalent to the top-down method for PSD review when the following are considered: 1) Recently issued/approved permits within the state of Texas; 2) Recently issued/approved permits in other states; and 3) Control technologies contained within the EPA's RACT/BACT/LAER Clearinghouse.

The referenced guidance is available on the TCEQ Web site: *http://www.tceq.texas.gov/assets/public/permitting/air/Guidance/NewSourceReview/airpoll_guidance.pdf*.

Section IV of the guidance, Specific Control Evaluations, says an applicant may choose to follow either the federal top-down approach for BACT reviews or the TCEQ three tier approach for BACT reviews, as long as the applicant provides information on the various control options and, when a less stringent control option is proposed, provides a detailed rationale and supporting documentation for eliminating the more stringent options.

While the commission has incorporated by reference the definition of BACT in federal rule in §116.160(c)(1)(A), it agrees with AECT that the SIP approval of the state's PSD program allows the use of the state's three-tier BACT review process. Therefore, there is no need for incorporation of

EPA's method as a method for BACT reviews for GHG PSD permit applications.

Comment

Environment Texas and Sierra Club commented that the BACT analysis should consider add-on control technology (such as integrated gasification combined cycle and carbon capture technologies), the process itself within the plant and efficiencies that can be gained, and fuel switching. They also commented that alternative technologies (such as turbine inlet air chilling, solar photovoltaic, thermal technology, and energy storage to enhance power production or replace the need for fuel gas) that reduce GHGs should also be considered in a BACT analysis. Sierra Club suggested additional rule language to §116.111(a)(2)(I)(ii).

Response

No change has been made to the rules in response to these comments. BACT reviews are conducted in accordance with the Air Permit Reviewer Reference Guide for Air Pollution Control (APDG 6110v2 01/2011). This guidance allows for the consideration of innovative technology and technological advancement (Section IV, Specific Control Evaluations). In addition, the emission reduction options may include pollution prevention as well as add-on abatement equipment and good engineering practice or

best management practice. Additionally, the scope of a PSD BACT review applies to each proposed individual new or existing modified source and pollutant emitting activity at which a significant net emissions increase would occur. Individual BACT determinations are performed for each pollutant subject to a PSD review emitted from the same proposed or existing modified sources.

The adopted amendment to §116.111(a)(2)(I)(ii) requires compliance with the applicable requirements for PSD in Chapter 116 for applications for GHG PSD permits. Specifically, in §116.160(c)(1)(A), the commission has incorporated by reference the definition of BACT in federal rule. This rule and the SIP approval of the state's PSD program, together with current guidance, allows for the dynamic nature of BACT determinations.

Comment

TXCHPI commented that environmental permitting regulations penalize Combined Heat and Power (CHP) by not allowing credit for the emission reductions from the reduced output of other power plants on the grid. This penalty is particularly significant in Texas because of the large industrial base needing large amounts of thermal energy. CHP systems can efficiently serve those needs while generating much more electric power than is used on site and this surplus electricity can be exported into the

competitive power market. TXCHPI commented that the energy efficiency of CHP should be considered BACT. An output based standard which measures both the power and thermal energy output of a system can, and should, be used to demonstrate the efficiency of a CHP system.

Response

No change has been made to the rule in response to this comment. The commission is incorporating GHGs into the existing PSD requirements in the commission's rules, in order to be consistent with federal requirements and to fulfill the intent of HB 788. Existing state and federal PSD rules do not allow for emission reduction credits from off-site sources to be considered in the PSD permitting process. While the TCEQ supports efforts to increase energy efficiency, including the use of combined heat and power, the TCEQ cannot consider off-site generated emission reduction credits from CHP units in the current rulemaking. The demonstration of efficiency and considerations of both the power and thermal output of an individual CHP may be pertinent considerations in the BACT determination and would be considered in that review.

Comment

TCC supported TCEQ's incorporation of general PSD concepts, including baseline,

netting, and plant-wide applicability limits (PAL). TIP commented that they interpret the TCEQ's proposal to retain all applicable PSD permitting concepts that inform the program's applicability, including the use of a multiple year period to calculate "baseline actual emissions," evaluation of site-wide "net" emissions increases and decreases, and PALs.

Response

No change was made to the rles in response to these comments. The commission is incorporating GHGs into the existing PSD requirements in the commission's rules in order to be consistent with federal requirements and fulfill the intent of HB 788. This rulemaking incorporates the PSD concepts of baseline actual emission rates and site-wide net emissions for GHG PSD permits. EPA promulgated GHG PAL requirements as part of the Tailoring Rule, Step 3 as published in the July 12, 2012, issue of the *Federal Register* (77 FR 41051), amending the PSD rules in 40 CFR §52.21. However, the commission did not incorporate these new GHG PAL requirements in 40 CFR §52.21 as part of this rulemaking.

30 TAC §116.164 Comments

Comment

Zephyr suggested adding the reference to the definition of GHGs in §101.1 to §116.164(a).

Response

No change has been made in response to this comment. It is not necessary to reference a definition each time a term is used. Section 116.10 incorporates the definitions in §101.1.

Comment

TIP and TPA supported that TCEQ will not require permitting of GHG emissions that are not subject to PSD review under the thresholds set by EPA's Tailoring Rule.

Response

The commission appreciates the support.

Comment

HB788WG commented that rule language changes were needed to clarify the intent of proposed new §116.164(a)(4). The commenter recommended changing the catchphrase of §116.164(a)(4) to "GHGs major modification at an existing source that is a major stationary source for GHGs."

Response

The commission has changed the rule in response to this comment, as

suggested by the commenter. Section 116.164(a)(4) is intended to address GHG major modifications at existing sources major for at least GHGs.

Comment

TPA requested clarification on the commission's intent regarding modifications at sources which are PSD major sources, solely due to emissions of GHGs. TPA provided a specific example and requested the commission's concurrence with EPA's conclusion, as referenced in the guidance document *Triggering PSD at Non-Anyway Sources and Modifications*, located on the Web site *http://www.epa.gov/nsr/ghgdocs/TriggeringPSDatnonAnywaySourcesandMods.pdf*. TPA's provided example: "Assume you have an existing source of GHG emissions whose PTE for CO_2e exceeds 100,000 tpy and has a mass-based emission level of greater than 250 tpy for GHGs. Assume this existing source has never undergone PSD permitting for GHGs because its construction predated the Tailoring Rule and because it's non-GHG emissions are not major for PSD. A modification is planned for this site with the following project emissions increases: increase in GHG emission is below 60,000 tpy CO2e, and increase in NO_x and SO_2 is 60 tpy, each. Under EPA's policy, the project will not trigger PSD review, even though the NO_x and SO_2 increments exceed the significance level, because EPA's 'major for one, major for all' PSD policy would apply only if the project's GHG emissions are subject to regulation under the Tailoring Rule."

Response

No change was made to the rules in response to this comment. The commission intends to apply EPA's published guidance on *Triggering PSD at Non-Anyway Sources and Modifications* to the provided example.

Comment

HB788WG commented that rule language changes were needed to clarify the intent of proposed new §116.164(a)(5) and to more closely track EPA's Tailoring Rule. The commenter recommended changing the rule language to "Existing source that is not major. The existing stationary source undertakes a physical change or change in the method of operation where the change alone will emit or have the potential to emit 100 tpy or more GHG on a mass basis, if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or 250 tpy or more GHGs on a mass basis; and 100,000 tpy or more CO_2e."

Response

No change has been made to the rule in response to this comment. The adopted rule fulfills the commission's intent that an existing minor source will trigger PSD review for GHGs if the physical or operational change in and of itself results in an increase of emissions of GHGs that is greater than or equal to the major source thresholds in EPA's Tailoring Rule and

§116.164.

Comment

HB788WG commented that a rule language change was needed to clarify the intent of proposed new §116.164(b). The commenter suggested changing "and" to "or" in the list "...do not require authorization under this subchapter, Subchapter F of this chapter (relating to Standard Permits), Subchapter G of this chapter (relating to Flexible Permits), and Chapter 106 of this title (relating to Permits by Rule) for emissions of GHGs."

Response

The commission agrees with the comment and has made this change to §116.164(b) because these are different types of authorizations rather than a list of authorizations that would cumulatively be required.

Comment

GPA commented in opposition to the recordkeeping requirements proposed in §116.164(b). GPA and TPA requested clarification that the intent of the proposed section was that records of the amount of GHG emissions from the source must be created and maintained; however, the proposed rule language did not specify GHGs. TPA suggested a clarifying edit which would include GHGs in §116.164(b). GPA commented that keeping

such records would be unreasonably burdensome, and suggested that companies be required to provide records upon request, instead of maintaining records of GHG emissions from multiple sources not expected to exceed the GHG thresholds. Pioneer and TXOGA commented requesting clarification regarding the extent of records the agency would consider sufficient. TIP requested clarification on the appropriate retention period for these records, and suggested the retention period not exceed five years.

Response

The commission has changed the rule in response to these comments to clarify the commission's basis for the recordkeeping requirement. The purpose of the recordkeeping requirement is that owners and operators with new construction, physical changes, or changes in operation that will emit GHGs can demonstrate that none of the conditions in §116.164(a), regarding the applicability of PSD requirements for emissions of GHGs, are met. The commission does not intend to require recordkeeping of all emissions of GHGs for purposes of reporting to TCEQ.

The commission is requiring that records be available to air pollution control agencies with jurisdiction to demonstrate non-applicability of GHG PSD requirements for specific construction or modifications of facilities.

Records should be maintained and available upon request for a minimum of five years. This is consistent with current record retention practice. Major sources of GHGs will need records of emissions of GHGs from construction or physical or operational changes that were not subject to GHG PSD permitting when a source conducts the *de minimis* threshold test (netting) for future physical or operational changes. The commission did not establish a maximum record retention period because owners or operators may want to keep records for periods longer than five years to verify emission changes that occur within the netting window and non-applicability of §116.164(a).

Comment

TXOGA commented that language should be added to §116.164(b) clarifying how a GHG PSD permit holder should document changes to an existing GHG PSD permit if a change is made that increases GHG emissions below the PSD threshold either at renewal or at the next modification. TXOGA requested clarification on the process to update emission limitations, the need to certify emissions, and if there is a requirement to report regarding the changes. TCC requested clarification in proposed §116.164(b) regarding how a GHG PSD permit holder should document changes to an existing GHG PSD permit if a change is made that decreases GHG emissions below the PSD threshold, such

as at a renewal or next modification.

Response

No change has been made in response to this comment. Section 116.164(b) is intended to establish that increases in emissions below the thresholds adopted in §116.164(a) do not require authorization. Because these increases in emissions are not regulated by federal law, codifying specific requirements to certify or report the non-regulated changes would be analogous to creating a minor source program for emissions of GHGs. The commission does not interpret HB 788 as providing that authority. Records of increases or decreases will be essential when owners or operators are conducting a GHG PSD netting analysis, as required in §116.160(b)(2). The commission anticipates that the executive director will provide options for owners or operators to voluntarily notify TCEQ of non-major modifications with emissions of GHGs. PSD permits do not have renewal requirements.

Comment

TCC and Zephyr requested clarification on what process should be followed to formally recognize non-PSD increases of GHGs above GHG PSD permit limits. Zephyr suggested that the TCEQ Form APD-CERT be used. TIP supported the use of existing synthetic minor tools under Chapters 106, 116, and 122. TIP suggested that a mechanism be

available to update the existing GHG PSD permit so that the permit holder may reflect non-PSD changes, if desired.

Response

No change was made to the rule in response to these comments. The commission anticipates that the executive director will provide options for owners or operators to voluntarily notify TCEQ of non-major modifications with emissions of GHGs. The commission did not propose and is not establishing a minor source permitting program for emissions of GHGs, but anticipates that owners or operators may want to take voluntarily actions with regard to non-major modifications or new construction that include emissions of GHGs. The commission will develop guidance to assist owners or operators during implementation.

Comment

Weaver commented the proposed rule would require owners and operators of sites that are minor sources of emissions of GHGs and are authorized by standard permits and permits by rule to keep records sufficient to demonstrate the amount of emissions of GHGs from the sources and make the records available when requested, but are not required to submit the records.

Response

No changes were made to the rule in response to this comment. The purpose of the recordkeeping requirement is that owners and operators with new construction, physical changes, or changes in operation that will emit GHGs can demonstrate that none of the conditions in §116.164(a), regarding the applicability of PSD requirements for emissions of GHGs, are met. The intent is not to require recordkeeping of all emissions of GHGs for purposes of reporting to TCEQ. The commission intends that records be available to demonstrate non-applicability of GHG PSD requirements for specific construction or modifications of facilities, and may be needed for future netting.

However, because Title V applicability is based on a source's potential to emit, the commission clarifies that owners or operators may choose to submit a certification in order to avoid Title V applicability, and the certification must include records or data to support the certification.

Comment

Sierra Club commented in general support of new §116.164 and §116.169, as well as the new rules related to standard permits.

Response

The commission appreciates the support.

30 TAC §116.169 Comments

Comment

AECT, GSEC, Golden Pass, OCC, and TCC requested clarification regarding the commission's intent regarding the transition of pending applications from EPA to TCEQ as proposed in §116.169. Specifically, the commenters requested clarification on a specific sentence in the preamble "...TCEQ expects EPA will retain PSD permit implementation authority for those specific sources that have submitted GHG PSD applications to EPA, but for which final agency action or the exhaustion of all administrative and judicial appeals processes have not yet been concluded or completed upon the effective date of EPA's final SIP approval of the new and amended sections in this chapter and rescission of the FIP." (See the November 8, 2013, issue of the *Texas Register* (38 TexReg 7898)). Commenters thought this sentence contradicted the intent of proposed language in §116.169.

Response

The commission has clarified the preamble language in response to the comments. The commission will accept transfer of any application, complete the review, and issue the GHG PSD permit if requirements are

met (consistent with the SIP approval of these rules). EPA's federal register notice of the FIP recession will outline the transition process. EPA proposed information regarding the transition process in the February 18, 2014, issue of the *Federal Register* (79 FR 9123).

Comment

AECT and Golden Pass commented that it is critical that each company that has a pending GHG PSD permit application be given the sole right to decide whether to transfer the application to TCEQ or allow EPA to complete the application review. AECT requested that rule language in proposed new §116.169 be updated to reflect such, and requested that TCEQ ask EPA to include such language in SIP approval and rescission of the FIP. C3P, Natgasoline, and OCI Beaumont commented that a smooth transition for pending applications was their primary concern. They encouraged TCEQ and EPA to work with applicants to ensure that applications proceed through the permitting process in a timely fashion, whether the application transitions to TCEQ or if EPA continues to process the application. TPA commented that input from EPA and the applicant should be taken into account in the transition process. GSEC and TIP commented that preference of the applicant be given significant weight in determining the transition of the application. OCC and GPA commented that applications should only be transferred to TCEQ upon request of the permit applicant, and requested additional clarification on the transition process.

Response

The commission has not changed rule language in response to these comments. The commission will accept any application that is transferred from EPA. EPA proposed additional information on the transition process in the February 18, 2014, issue of the *Federal Register* (79 FR 9123).

Comment

C3P, Natgasoline, and OCC requested clarification on the priority that GHG PSD applications will receive once transferred to TCEQ. C3P and Natgasoline commented that TCEQ already gives priority in its PSD air permitting program to those applications which are designated economic development projects by the Texas Governor's Office of Economic Development. C3P and Natgasoline commented that to receive this designation, these projects must meet certain requirements in terms of their contribution to the Texas economy, and they encouraged TCEQ to give the same high priority to its review of GHG applications for designated Economic Development Projects. OCC requested clarification on the priority level transferred applications will receive.

Response

No change was made to the rule in response to these comments. The

executive director will review transferred applications and will prioritize them on a case-by-case basis, consistent with other PSD and NSR applications. Further, the commission works with the Texas Governor's Office of Economic Development and individual applicants to expedite review of applications, as appropriate.

Comment

GPA requested clarification on the actions TCEQ intends to take on permits that are transferred from EPA under §116.169. GPA and TPA suggested that the transfer of an application should not result in restarting the clock or the review process on the application. They suggested that TCEQ should pick up the application where EPA left off and proceed forward with review rather than re-doing work (such as BACT determinations) that EPA may have already completed.

Response

No change was made to the rule in response to these comments. The commission intends to appropriately conduct the review of each application to ensure all applicable requirements are met. TCEQ will process the applications in accordance with SIP-approved rules and current processes. TCEQ will not unnecessarily repeat work conducted by EPA where it is consistent with TCEQ rules and processes.

Comment

AECT requested that TCEQ take all appropriate action to cause the transition of authority of the GHG PSD permitting program from EPA to TCEQ to occur as soon as possible. GSEC strongly encourages the TCEQ to continue its efforts and to take all steps necessary to have the proposed rule adopted by March 2014, and commends and encourages TCEQ to continue working with EPA to have the SIP revisions approved and rescission of the FIP completed in a timely manner. GPA commented that it is urgent that TCEQ act as quickly as possible to complete this rulemaking and supported efforts to parallel process the rulemaking and EPA's SIP approval and rescission of the FIP. TCC commented that it is imperative that the transition take place quickly and efficiently.

Response

No change was made to the rule in response to these comments. The commission is committed to timely implementation of the requirements of HB 788. On December 2, 2013, the executive director sent a letter to EPA Region 6 requesting that EPA parallel process the GHG rules in order to expedite approval into the Texas SIP and rescission of the FIP. The EPA published proposed approval of SIP revisions in the February 18, 2014, issue of the *Federal Register* (79 FR 9123). The commission will continue to work with EPA as appropriate to facilitate approval of SIP revisions and

rescission of the FIP.

Comment

TCC commented that rule language in §116.169 should be edited to reflect that TCEQ should be able to accept GHG PSD permit applications from EPA when the FIP is rescinded "as to greenhouse gases," rather than in its entirety.

Response

No change has been made in response to this comment. Adopted §116.169 states that the commission will accept transfer of GHG PSD applications filed with EPA upon the effective date of approval of Chapter 116 and rescission of the FIP. The changes to the PSD program are specific to GHGs and are intended by the commission to obtain authority to issue PSD permits for these emissions. If the EPA's FIP rescission is less broadly applicable, it should not prohibit or impinge on the transition of GHG PSD permitting authority. The EPA published proposed approval of SIP revisions in the February 18, 2014, issue of the *Federal Register* (79 FR 9123).

Comment

AECT, TCC, TIP, and TXOGA requested clarification in the rule or preamble that after

the date TCEQ becomes the GHG PSD permitting authority in Texas, TCEQ will handle all changes (modifications, renewals, etc...) to GHG PSD permits that EPA has issued, as well as enforcement of EPA-issued permits. AECT requested that TCEQ ask EPA to include language to that effect in its SIP approval and rescission of the FIP. TCC and TIP requested clarification that a permit holder would not need to reapply to TCEQ if they have been issued a permit by EPA, and that an EPA-issued GHG PSD permit satisfies the requirement to obtain a permit from TCEQ. TIP commented that TCEQ should be able to administer these permits in the same manner as a GHG PSD permit originally issued by the TCEQ. TIP commented that the authority would be necessary to allow non-PSD changes at sources for which the EPA has previously issued GHG PSD permits. TIP commented that an appropriate provision could be included in proposed §116.169.

Response

No change has been made in response to these comments. The executive director submitted a letter to EPA Region 6 on January 13, 2014, clarifying the commission's intent to fully administer EPA-issued permits, including enforcement authority and permitting actions. Correspondence between EPA and TCEQ regarding Texas Air Permitting Program can be found on this Web site:

http://www.tceq.texas.gov/permitting/air/announcements/nsr_announce_9_5_07.html.

Comment

TIP requested that the TCEQ confirm that an EPA-issued GHG PSD permit is sufficient to allow a source to begin construction after the TCEQ GHG permitting program is in place. While TIP did not believe that the TCEQ intended to prevent a source from relying on an EPA-issued GHG PSD permit, it is important for such a clarification to be made. TIP commented that the TCEQ's existing PSD permitting rule in §116.160 incorporates by reference numerous features of the federal PSD rule in 40 CFR §52.21 but provides that in the reference-incorporated sections, "The term 'executive director' shall replace the word 'administrator' . . ." TIP commented that this manner of incorporation by reference could be taken to imply that PSD review must be conducted by the TCEQ (as opposed to simply mean that PSD review by TCEQ or EPA must occur). TIP commented that this matter will be especially important if there is a time period during which the EPA GHG permitting FIP remains in place after the TCEQ GHG permitting program becomes effective under state law.

Response

No changes have been made in response to this comment. The commission confirms that once a source has obtained all necessary preconstruction permits, whether issued by TCEQ or EPA, construction may begin. EPA-issued PSD permits remain legally valid authorizations after TCEQ

obtains authority to issue PSD permits for GHG emissions. On January 13, 2014, the executive director submitted a letter to EPA Region 6, confirming both agencies' understanding that once the FIP was rescinded, TCEQ would have authority to administer and enforce any EPA-issued GHG PSD permit. An integral element of this authority is the recognition that EPA-issued permits are validly issued permits that do not require further action by TCEQ to provide the authority to construct if all other preconstruction authorizations have been obtained. Correspondence between EPA and TCEQ regarding Texas Air Permitting Program can be found on this Web site:
http://www.tceq.texas.gov/permitting/air/announcements/nsr_announce_9_5_07.html.

Comment

C3P, Natgasoline, and OCI Beaumont commented that it may be more expeditious for TCEQ to begin the State's review of applications prior to obtaining federal approval. TCC supported the idea of EPA and TCEQ entering into a work-share agreement, whereby TCEQ would begin work on certain GHG PSD permits that EPA believes will ultimately be transferred to TCEQ, in order to promote an efficient and timely transition.

Response

No change was made to the rule in response to these comments. The commission and EPA have entered a tentative work-share agreement for some of the applications submitted to EPA. The commission is assisting with BACT reviews, drafting statements of basis, and drafting permits. EPA remains the issuing authority for the permits and will be responsible for the public notice process and responding to comments. The commission is committed to an efficient transition, but will not have legal authority to issue notice of GHG PSD permit applications or issue permits until EPA approves the necessary SIP revisions that are part of this rulemaking, and rescinds the FIP.

Comment

AECT requested clarification that permit applications which are transferred from EPA to TCEQ will no longer be subject to non-PSD federal requirements, such as biological assessments.

Response

No change has been made to the rule in response to this comment. The commission clarifies that federal agency reviews (other than those derived from the FCAA) and biological assessments are required only for federal actions, such as EPA-issued GHG PSD permits. TCEQ-issued PSD permits under a SIP-approved program are not federal actions that trigger such

review. A SIP-approved PSD permitting program differs from a delegated program where a state or local permitting authority has been delegated the authority by EPA to issue PSD permits in accordance with federal program requirements, and therefore acts in EPA's stead. Further, TCEQ's PSD rules do not include the requirement for sources to conduct biological assessments or obtain concurrence from federal agencies.

30 TAC §116.610 Comments

Comment

TPA supported the proposed revisions to Chapter 116, to allow the use of standard permits to authorize emissions of non-GHGs at new and modified sources that will also emit GHGs.

Response

The commission appreciates the support.

Comment

GPA and TPA commented that additional rule language should be added to §116.610(b) to resolve inconsistencies with specific rule language in the Air Quality Standard Permit for Oil and Gas Handling and Production Facilities. GPA commented that subsections (c)(2)(A) and (h)(1) of the standard permit prohibit its use for a source that is considered

major. GPA and TPA suggested that the phrase "notwithstanding any provision in any specific standard permit to the contrary" should be added to §116.610(b).

Response

The commission has changed the rule in response to these comments. The commission recognizes the potential conflict in subsections (c)(2)(A) and (h)(1) of the Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, which could be interpreted to prohibit the use of it with sources that obtain a GHG PSD permit. The commission's intent is that all standard permits be eligible for use at sources that are required to obtain a GHG PSD permit due solely to emissions of GHGs. The addition of the language "notwithstanding any provision in any standard permit to the contrary" to §116.610(b) avoids the unintended consequence of precluding the use of standard permits for sources which must obtain GHG PSD permits. Additionally, the commission clarified that the exemption applies to "any project" in order to maintain consistency with the current practice of issuing standard permits on a project basis.

30 TAC §116.611 Comments

Comment

GPA, Pioneer, TCC, TIP, TPA, and TXOGA suggested alternatives to the 90-day deadline

to certify emissions in order to avoid Title V applicability that was proposed in §116.611(c)(3)(A) and §122.122(e)(3)(A). GPA, TIP and TPA suggested a deadline of one year. Pioneer and TXOGA suggested a deadline of 180 days. TCC suggested a deadline of 120 days.

Response

The commission has changed the rule in response to these comments. In the proposal, the commission invited comment regarding the time limit in §122.122(e)(3) to file certified registrations for existing sites that do not have a federally enforceable emission rate for their emissions of GHGs, such as a PSD permit. The commission proposed a deadline of 90 days based on previous rule language requiring sites that had established certified registrations prior to the 2002 amendments to submit those registrations to TCEQ 90 days after the amendments were adopted. The 2002 amendments were necessary to address deficiencies in the Texas Title V program as determined by EPA. Those amendments did not trigger Title V applicability for a new category of sources for the first time, as do the amendments for emissions of GHGs in this rulemaking.

In §122.130, sources of GHGs that trigger Title V for the first time have up to 12 months after EPA approval of these program rules to submit an

abbreviated application to TCEQ. This is consistent with federal and state application due dates when an EPA or TCEQ action causes a site to become subject to Title V. Given that site owners or operators have up to 12 months to submit an abbreviated application if they are subject to Title V, it is reasonable to provide more time to certify that a site is not subject to the Title V permitting program. Changing the submittal deadline from 90 days to up to 12 months provides a reasonable time for owner or operators to quantify emissions of GHGs and is consistent with the time allowed for initial Title V applications to be submitted to TCEQ.

For consistency, the commission has changed §122.130(b)(3) from proposal to remove the reference to SIP approval of §122.122. Subsequent to proposal of this rulemaking, EPA Region 6 informed the commission that, in addition to submitting §122.122 as a revision to the SIP, amendments to Chapter 122, including the Potential to Emit section, must be submitted as a separate revision to Texas' Federal Operating Permits Program. Although EPA has proposed approval of revisions to the SIP, it has not done so for the operating permits program revisions. Therefore, the commission anticipates EPA will propose action on the Chapter 122 amendments shortly after the commission adopts and submits these amended sections to EPA. Thus, EPA action on the operating permits program revision will result in

Title V permitting of GHG major sources and trigger the 12-month application clock.

General

Comment

AECT, HB788WG, and TIP commented that rule language should be added to provide that if federal law changes and PSD permitting for GHGs is no longer required, then GHG PSD permits would no longer be required in Texas. HB788WG commented that it was important that the rescission language appears in the rules, and that the rescission language have the opportunity to be included in the Texas SIP. They commented that questions about how EPA might act on such a proposed SIP revision should not prevent the TCEQ from including this important language.

Response

The commission has changed the rule in response to these comments. New subsection (b) has been added to §116.169 stating that GHG emissions are subject to the PSD permitting requirements of §116.164 unless a change in federal law occurs. This new subsection provides the commission with the authority to issue permits consistent with state and federal law, which may change based on the litigation that was considered by the United States Supreme Court on February 24, 2014, for which a decision is expected in

about June 2014. This subsection will not be submitted as a revision to the SIP.

For those sections that will be submitted to EPA as a SIP revision, THSC, §382.05102 (HB 788) specifically directs TCEQ to repeal these PSD rules and submit them to EPA as a SIP revision if authorization to emit GHGs is no longer required under federal law. This language correctly reflects the FCAA SIP revision process for repealing PSD SIP approved program rules. Rulemaking under the APA and the federal requirements for notice and comment of SIP changes will be necessary if the rules and SIP need to be changed to reflect changes in PSD permitting requirements under federal law.

Comment

AECT commented that TCEQ should combine each GHG PSD permit (issued by EPA or TCEQ) with the related non-GHG permit into a single permit at the next appropriate opportunity.

Response

No changes have been made to the rules in response to this comment. The executive director is still in the process of making final determinations

regarding the integration of GHG PSD permits with non-GHG authorizations. The executive director is still in the process of implementation activities, and will work with stakeholders to determine viable options.

Comment

AECT commented that TCEQ should change the permitting process after TCEQ becomes the permitting authority so that projects that will be subject to GHG PSD review and subject to NSR for non-GHGs will apply for and obtain a single permit that covers both the GHG and non-GHG pollutants.

Calpine, GPA, and TPA commented in support of the commission's proposal to segregate the review process and issue separate GHG PSD permits from authorizations for non-GHG emissions. Calpine recommended that the agency develop a process allowing the harmonization of GHG and non-GHG specific permit actions. Calpine also commented that the monitoring, recordkeeping, and reporting requirements should be consistent between the permits. GPA and TPA commented that the dual permit system would not allow procedural requirements for non-GHG applications to hinder the progress of a GHG PSD application.

Response

The commission appreciates the support and understands the commenters' concern for timely permit application review. The executive director is still in the process of implementation activities, and will work with stakeholders to determine viable options. However, no final decisions have been made, and there is no need to include any such implementation activity decisions in the rule.

Comment

AECT and Calpine commented that a separate permit application fee should not be charged for a GHG PSD application, in addition to the application fee for the corresponding non-GHG NSR permit application fee. Calpine suggested that GHG PSD permits should be treated consistently with TCEQ's current practice of assessing the single highest applicable fee to a project that triggers multiple permit programs (e.g., state NSR, PSD, and nonattainment).

Response

No changes have been made to the rules in response to these comments. The commission clarifies that there is a single fee for a project with multiple permit applications under Chapter 116, Subchapter B, consistent with §116.163.

Comment

Calpine, GPA, and TPA supported TCEQ's intent to provide streamlining options for authorizing GHG PSD permits. GPA and TPA commented the use of streamlining tools such as general permits or the use of presumptive BACT are appropriate for certain sources.

Response

The commission appreciates the support.

Comment

Representative Burnam commented that in congruence with the opinions of the general public and the scientific community, the relationship between GHGs and climate change should be acknowledged.

Response

No changes have been made to the rules in response to this comment. The comment reflects EPA's basis for regulating GHGs from stationary sources under the PSD program. The commission does not find it necessary to include a discussion about the causes of global climate change in this rulemaking.

Comment

TPA commented that some facilities inject CO_2 underground for long-term storage or for use in enhanced oil recovery. TPA commented that there should be an incentive for taking such steps to prevent release of GHGs to the atmosphere. TPA commented that the issue may be beyond the scope of the current rulemaking, but asked that the agency begin thinking about how to incentivize operations that effectively remove CO_2 emissions from venting to the atmosphere altogether.

Response

No changes have been made to the rules in response to this comment. The commission agrees that this concept is beyond the scope of the current rulemaking. HB 788 authorized TCEQ, to the extent that GHGs require authorization under federal law, to authorize GHGs in a manner consistent with the existing requirement to obtain a PSD permit under the TCAA.

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; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also adopted 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; 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, §382.051, 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, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of GHGs. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. 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 standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements House Bill 788, 83rd Legislature, 2013, THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.0513, 382.05102, 382.0515, 382.0517, 382.0518, and 383.05195; and Texas Government Code, §2001.004 and

§2001.006; 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. 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 Subchapter B, Divisions 5 and 6 of this chapter (relating to Nonattainment Review Permits and Prevention of Significant Deterioration Review); and Subchapter C, Division 1 of this chapter (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) Carbon dioxide equivalent (CO_2e) emissions--shall represent an amount of greenhouse gases (GHGs) emitted, and shall be computed by multiplying the mass amount of emissions in tons per year (tpy) for the GHGs, as defined in §101.1 of this title (relating to Definitions), by the gas's associated global warming potential as published in 40 Code of Federal Regulations Part 98, Subpart A, Table A-1 – Global Warming Potentials, and summing the resultant values.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) *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.

(14) 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.

(15) Federally regulated new source review pollutant--As defined in subparagraphs (A) - (E) 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) except for greenhouse gases, 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;

(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; or

(E) greenhouse gases that meet or exceed the thresholds established in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(16) Greenhouse gases (GHGs)--as defined in §101.1 of this title (relating to Definitions).

(17) 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.

(18) 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.

(19) 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, or greenhouse gases. 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). For greenhouse gases, the major source

thresholds are specified in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources). 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).

(20) 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 and in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

Figure: 30 TAC §116.12(20)(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]	100	40	1.10 to 1
I marginal	100	40	1.15 to 1
II moderate	50	25	1.20 to 1
III serious	25	25	1.30 to 1
IV severe			
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 as defined in §101.1 of this title (relating to Definitions).

[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 significant 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.

[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 National Ambient Air Quality Standard forNO_2.

(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.

(21) 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.

(22) 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.

(23) 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.

(24) 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).

(25) Plant-wide applicability limit effective date--The date of issuance of the plant-wide applicability limit permit.

(26) 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.

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

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

(29) 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.

(30) 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.

(31) 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 (relating to General Air Quality Rules), 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.

(32) 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.

(33) 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.

(34) 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.

(35) 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.

(36) 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.

(37) 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*.

(38) 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

§116.111

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; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also adopted 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; 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, §382.051, 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, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of greenhouse gases. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. 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 standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements House Bill 788, 83rd Legislature, 2013, THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.0513, 382.05102, 382.0515, 382.0517, 382.0518, and 383.05195; and Texas Government Code, §2001.004 and

§2001.006; and FCAA, 42 USC, §§7401 *et seq*.

§116.111. General Application.

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and property of the public.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Commission on Environmental Quality Sampling Procedures Manual."

(C) Best available control technology (BACT) must be evaluated for and applied to all facilities subject to the TCAA. Prior to evaluation of BACT under the TCAA, all facilities with pollutants subject to regulation under Title I Part C of the Federal Clean Air Act (FCAA) shall evaluate and apply BACT as defined in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements).

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed

under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review.

(i) If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(ii) If the proposed facility or modification meets or exceeds the applicable greenhouse gases thresholds defined in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources) then it shall comply with all applicable requirements in this chapter concerning PSD review for sources of greenhouse gases.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results

predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(L) Mass cap and trade allowances. If subject to Chapter 101, Subchapter H, Division 3, of this title (relating to Mass Emissions Cap and Trade Program), the proposed facility, group of facilities, or account must obtain allowances to operate.

(b) In order to be granted a permit, amendment, or special permit amendment, the owner or operator must comply with the following notice requirements.

(1) Applications declared administratively complete before September 1, 1999, are subject to the requirements of Division 3 of this subchapter (relating to Public Notification and Comment Procedures).

(2) Applications declared administratively complete on or after September 1, 1999, are subject to the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Request for Reconsideration and Contested Case Hearings; Public Comment). Upon request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 6: PREVENTIONOF SIGNIFICANT DETERIORATION REVIEW

§§116.160, 116.164, 116.169

Statutory Authority

The amendment and new sections 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; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment and new sections are also adopted 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; 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, §382.003, concerning Definitions, which defines certain terms used in the Chapter 382; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and 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,

§382.051, 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, §382.05101 concerning De Minimis Air Contaminants, which authorizes the commission to develop by rule criteria to establish a *de minimis* level of air contaminants below which a permit, standard permit or permit by rule is not required; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; and THSC, §382.05102, which relates to the permitting authority of the commission for emissions of greenhouse gases. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. The amendment and new sections 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 standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment and new sections implement House Bill 788, 83rd Legislature, 2013, THSC, §§382.002, 382.003, 382.011, 382.012, 382.017, 382.051, 382.05101, 382.0513, 382.05102, 382.0515, 382.0517, 382.0518, and 383.05195; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq*.

§116.160. Prevention of Significant Deterioration Requirements.

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the requirements of this section. In addition, each proposed new major source of greenhouse gases (GHGs) or major modification involving GHGs shall comply with the applicable requirements of this section. The owner or operator of a proposed new or modified facility that will be a new major stationary source for the prevention of significant deterioration air contaminant shall meet the additional requirements of subsection (c)(1) - (4) of this section.

(b) *De minimis* threshold test (netting):

(1) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant identified in 40 Code of Federal Regulations (CFR) §52.21(b)(23); and

(2) is required for GHGs at existing major sources if the proposed modification results in an emissions increase, without regard to decreases, as required in §116.164(a)(2) and (4)(B) of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(c) In applying the *de minimis* threshold test (netting), if the net emissions increases are greater than the major modification levels for the pollutant identified in 40 CFR §52.21(b)(23) and for GHGs in §116.164 of this title, the following requirements apply.

(1) In addition to those definitions in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) the following definitions from prevention of significant deterioration of air quality regulations promulgated by the United States Environmental Protection Agency (EPA)

in 40 CFR §52.21 and the definitions for protection of visibility and promulgated in 40 CFR §51.301 as amended July 1, 1999, are incorporated by reference:

(A) 40 CFR §52.21(b)(12) - (15), concerning best available control technology, baseline concentrations, dates, and areas;

(B) 40 CFR §52.21(b)(19), concerning innovative control technology; and

(C) 40 CFR §52.21(b)(24) - (28), concerning federal land manager, terrain, and Indian reservations/governing bodies.

(2) The following requirements from prevention of significant deterioration of air quality regulations promulgated by the EPA in 40 CFR §52.21 are hereby incorporated by reference:

(A) 40 CFR §52.21(c) - (k), concerning increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, exemptions, control technology review, and source impact analysis;

(B) 40 CFR §52.21(m) - (p), concerning air quality analysis, source information, additional impact analysis, and sources impacting federal Class I areas;

(C) 40 CFR §52.21(r)(4), concerning relaxation of an enforceable limitation; and

(D) 40 CFR §52.21(v), concerning innovative technology.

(3) The term "facility" shall replace the words "emissions unit" in the referenced sections of the CFR.

(4) The term "executive director" shall replace the word "administrator" in the referenced sections of the CFR except in 40 CFR §52.21(g) and (v).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a

generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

§116.164. Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources.

(a) Greenhouse Gases (GHGs) are subject to Prevention of Significant Deterioration review under the following conditions:

(1) New source, major for non-GHGs. The stationary source is a new major stationary source for a federally regulated new source review (NSR) pollutant that is not GHGs, and will emit or have the potential to emit 75,000 tons per year (tpy) or more carbon dioxide equivalent (CO_2e); or

(2) Existing source, major for non-GHGs. The stationary source is an existing major stationary source for a federally regulated NSR pollutant that is not GHGs, and will have a significant net emissions increase of a federally regulated NSR pollutant that is not GHGs, and a net emissions increase greater than zero tpy GHGs on a mass basis and 75,000 tpy or more CO_2e.

(3) New source, major for GHGs Only. The new stationary source that will emit or has the potential to emit greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 Code of Federal Regulations (CFR) §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e.

(4) GHGs major modification at an existing source that is a major stationary source for GHGs.

(A) The existing stationary source emits or has the potential to emit greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e; and

(B) the stationary source undertakes a physical change or change in the method of operation that will result in a net emissions increase greater than zero tpy GHGs on a mass basis, and a net emissions increase of 75,000 tpy or more CO_2e.

(5) Existing source that is not major. The existing stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase greater than or equal to 100 tpy GHGs on a mass basis, if the source is

listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO_2e.

(b) New stationary sources with emissions of GHGs, or existing stationary sources that undertake a physical change or change in the method of operations that includes emissions of GHGs, that do not meet any of the conditions in subsection (a) of this section do not require authorization under this subchapter, Subchapter F of this chapter (relating to Standard Permits), Subchapter G of this chapter (relating to Flexible Permits), or Chapter 106 of this title (relating to Permits by Rule) for emissions of GHGs. Owners or operators of these sources must keep records sufficient to demonstrate the amount of emissions of GHGs from the source as a result of construction, a physical change or a change in method of operation do not require authorization under subsection(a) of this section. Records must be made available at the request of personnel from the commission or any local air pollution control agency having jurisdiction. Records must be maintained for a minimum of five years from the date of the construction, physical change, or change in method of operation.

§116.169. Greenhouse Gases Program Transitions.

(a) Upon the effective date of the United States Environmental Protection Agency (EPA) approval of this chapter and rescission of the Federal Implementation Plan as

published in the May 3, 2011, issue of the *Federal Register* (76 FR 25178), the commission will accept transfer of and review applications previously filed with EPA for greenhouse gas prevention of significant deterioration permits. These applications will be subject to the applicable requirements of this chapter.

(b) Section 116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gas Sources) will not apply to greenhouse gases at a source that would not be subject to Prevention of Significant Deterioration Review for greenhouse gases under a change in federal law on or after March 26, 2014.

SUBCHAPTER F: STANDARD PERMITS

§116.610 AND §116.611

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; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted 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; 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, §382.051, 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, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with this chapter; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0517, concerning Determination of Administrative Completion of Application, which specifies when the commission shall determine applications are administratively complete; THSC, §382.0518, concerning Preconstruction Permit, which authorizes the commission to issue preconstruction permits; THSC, §382.05102, which relates to the permitting authority of the commission for emissions of GHGs; and THSC, §382.05195 concerning Standard Permits, which authorizes the commission to issue standard permits for new or existing similar facilities. Additional relevant sections are Texas Government Code, §2006.004, concerning Requirements to Adopt Rules of Practice and Index Rules, Orders, Decisions, which requires state agencies to adopt procedural rules and, Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation. 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 standards will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement House Bill 788, 82rd Legislature, 2013, THSC,

§§382.002, 382.011, 382.012, 382.017, 382.051, 382.0513, 382.05102, 382.0515, 382.0517, 382.0518 and 383.05195; and Texas Government Code, §2001.004 and §2001.006; and FCAA, 42 USC, §§7401 *et seq*.

§116.610. Applicability.

(a) Under the Texas Clean Air Act, §382.051, a project that meets the requirements for a standard permit listed in this subchapter or issued by the commission is hereby entitled to the standard permit, provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration.

(1) Any project that results in a net increase in emissions of air contaminants from the project other than water, nitrogen, ethane, hydrogen, oxygen, or greenhouse gases (GHGs) as defined in §101.1 of this title (relating to Definitions), or those for which a national ambient air quality standard has been established must meet the emission limitations of §106.261 of this title (relating to Facilities (Emission Limitations)), unless otherwise specified by a particular standard permit.

(2) Construction or operation of the project must be commenced prior to the effective date of a revision to this subchapter under which the project would no longer meet the requirements for a standard permit.

(3) The proposed project must comply with the applicable provisions of the Federal Clean Air Act (FCAA), §111 (concerning New Source Performance Standards) as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA).

(4) The proposed project must comply with the applicable provisions of FCAA, §112 (concerning Hazardous Air Pollutants) as listed under 40 CFR Part 61, promulgated by the EPA.

(5) The proposed project must comply with the applicable maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(6) If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the proposed facility, group of facilities, or account must obtain allocations to operate.

(b) Any project that constitutes a new major stationary source or major modification as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) because of emissions of air contaminants other than greenhouse gases is subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter. Notwithstanding any provision in any specific standard permit to the contrary, any project that constitutes a new major stationary source or major modification which is subject to Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review) due solely to emissions of greenhouse gases may use a standard permit under this chapter for air contaminants that are not greenhouse gases.

(c) Persons may not circumvent by artificial limitations the requirements of §116.110 of this title.

(d) Any project involving a proposed affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants:

Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)). Affected sources subject to Subchapter E of this chapter may use a standard permit under this subchapter only if the terms and conditions of the specific standard permit meet the requirements of Subchapter E of this chapter.

§116.611. Registration to Use a Standard Permit.

(a) If required, registration to use a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the executive director, the appropriate commission regional office, and any local air pollution program with jurisdiction, before a standard permit can be used. The registration must be submitted on the required form and must document compliance with the requirements of this section, including, but not limited to:

(1) the basis of emission estimates;

(2) quantification of all emission increases and decreases associated with the project being registered;

(3) sufficient information as may be necessary to demonstrate that the project will comply with §116.610(b) of this title (relating to Applicability);

(4) information that describes efforts to be taken to minimize any collateral emissions increases that will result from the project;

(5) a description of the project and related process; and

(6) a description of any equipment being installed.

(b) Construction may begin any time after receipt of written notification from the executive director that there are no objections or 45 days after receipt by the executive director of the registration, whichever occurs first, except where a different time period is specified for a particular standard permit or the source obtains a prevention of significant deterioration permit for greenhouse gases as provided in §116.164(a) of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(c) In order to avoid applicability of Chapter 122 of this title (relating to Federal Operating Permits), a certified registration shall be submitted. The certified registration must state the maximum allowable emission rates and must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be amended if the basis of the emission estimates changes or the maximum emission rates listed on the

registration no longer reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site. Certified registrations must also be maintained in accordance with the requirements of §116.115 of this title (relating to General and Special Conditions).

(1) Certified registrations established prior to December 11, 2002, shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after December 11, 2002, shall be submitted no later than the date of operation.

(3) Certified registrations established for greenhouse gases (as defined in §101.1 of this title (relating to Definitions)) on or after the effective date of EPA's final action approving amendments to §122.122 of this title (relating to Potential to Emit) into the State Implementation Plan shall be submitted:

(A) for existing sites that emit or have the potential to emit greenhouse gases, no later than 12 months after the effective date of EPA's final action

approving amendments to §122.122 of this title as a revision to the Federal Operating Permits Program; or

(B) for new sites that emit or have the potential to emit greenhouse gases, no later than the date of operation.