

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§122.143, 122.146, 122.165, 122.204, 122.210, 122.241, 122.320, 122.345, 122.503 - 122.505.

If adopted, the proposed revisions will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the TCEQ's Federal Operating Permits (FOP) Program.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 4181, 85th Texas Legislature, 2017, amended Texas Health and Safety Code (THSC), §382.0562(a) to provide for the use of an electronic method or system to notify permit applicants and permit commenters of a proposed final action on an FOP. Prior to HB 4181, these final action notices were required to be sent by first class mail. HB 4181 became effective on September 1, 2017. Revisions to Chapter 122 are necessary to reflect the new electronic method of providing proposed final action notifications.

By providing TCEQ with the authority to use an electronic method for providing these proposed final action notices, HB 4181 will reduce printing and postage costs and other logistical concerns associated with the use of traditional first-class mail for delivery of these notices. This is expected to result in a more efficient and more streamlined permitting process for TCEQ and for FOP applicants.

While the primary purpose of this rulemaking is to implement the electronic notification process provided for by HB 4181, TCEQ is also taking this opportunity to address several other issues with Chapter 122. These additional proposed revisions include: expanding the use of electronic communication to notify FOP holders that their permits are due for renewal; specifying that permit holders are required to provide a compliance certification or a signed certification of accuracy in certain additional circumstances; and various clarifications and corrections to the rules.

The proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include: appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

In a concurrent rulemaking published in this issue of the *Texas Register*, TCEQ is proposing revisions to 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to implement another section of HB 4181 relating to the use of an electronic method to notify air permit holders that an air permit is due for renewal.

Section by Section Discussion

§122.143, General Terms and Conditions

The commission proposes an amendment to §122.143(15) that would delete the term "annual" from the language referring to compliance certifications. This change is proposed in conjunction with the proposed changes to §122.146(1), which specify that permit holders must submit a compliance certification for certain additional types of events. Since the proposed amended rules would now require compliance certifications for some events in addition to the annual certification, the language in §122.141(15) is proposed to be phrased more generally to encompass all situations for which a compliance certification is required.

§122.146, Compliance Certification Terms and Conditions

The commission proposes an amendment to §122.146(1) that would require permit holders to submit a compliance certification after an issued permit has been voided, and after any change of ownership of the permitted units occurs. These compliance certifications would be required to be submitted no later than 30 days after the date the permit is voided, or the effective date of the change of ownership, respectively. In the case where a permit is voided, this final compliance certification must cover the period from the date of the most recent certification to the date of the permit voidance letter. Once this final compliance certification for a voided permit is submitted, no further (i.e., annual) compliance certifications for that permit would be required. For

situations involving a change of ownership, permit holders would be required to submit a compliance certification addressing compliance from the date of the last certification up to the end of their ownership period.

The addition of these specific circumstances in which a compliance certification is required is necessary to ensure that permit holders provide documentation of compliance that covers the entire active permit period and to ensure that there are no gaps in reporting or certification coverage. The proposed requirements are already a part of current TCEQ guidance relating to Title V compliance certifications, and including them in the rule will ensure that permit holders are aware of the need for these certifications to be submitted when these events occur and that these certifications are enforceable. The commission proposes related grammatical changes to §122.146(2), (5), and (5)(E) to reflect that these additional situations or events would require a compliance certification.

§122.165, Certification by a Responsible Official

The commission proposes an amendment to §122.165(a) which would expand the list of documents or actions that require the submittal of a certification of accuracy and completeness signed by a responsible official. The commission proposes to require a signed certification of accuracy and completeness for the following additional documents or actions: requests to void an issued permit; requests to withdraw a permit application; off-permit notices; and operational flexibility notices. The

commission is proposing this change to ensure that all significant permit actions and requests are covered by a certification that is signed by a responsible official attesting to the accuracy and completeness of the information being submitted. In general, all documents submitted to the TCEQ in support of an FOP, or that are required by Chapter 122, or by an operating permit condition(s) require certification by the responsible official or appropriate designee to ensure federal enforceability of the FOP. The commission is also proposing to revise the reference to annual compliance certifications in §122.165(a)(8) to maintain consistency with the proposed changes to §122.146 concerning compliance certifications for permit avoidance and change of ownership.

§122.204, Temporary Sources

The commission is proposing a revision to §122.204(a) to clarify the meaning of a temporary source and improve consistency with corresponding federal regulations relating to temporary sources, such as 40 Code of Federal Regulations (CFR) §70.6(e) and §71.6(e). Under applicable federal regulations, permitting authorities may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The current rule language referring to "any five-year period" might be interpreted to mean that a stationary source which changes location, even if only once during a prior, arbitrary five-year period, could then be considered as temporary for the remainder of its operational life. The proposed language is intended to clarify that a source is only considered to be a

temporary source if it has at least one change of location during the term of the permit.

§122.210, General Requirements for Revisions

The commission proposes a revision to §122.210(g) which would clarify that, during a permit revision, the executive director may combine multiple permits at the site into a single permit, or divide a single permit into multiple permits. This type of action would typically be at the request of the applicant or permit holder. Examples of situations where the division or consolidation of a permit or permits might be appropriate could include, but are not limited to, changes to the facilities, processes, or process areas at the site which affect how the site is operated or controlled or business changes to the ownership, operation, or control of facilities, processes, or process areas at the site. As a result of the addition of this proposed requirement under §122.210(g), the content of existing §122.210(g) relating to revisions to General Operating Permits is re-lettered as §122.210(h).

§122.241, Permit Renewals

The commission proposes to amend §122.241(c)(1), to add electronic communication as an available method for the executive director to provide notification to permit holders that an FOP is scheduled for review. This will provide consistency with the concurrent HB 4181 revisions to §122.345, which will allow for electronic notifications of final permit actions and with the HB 4181 changes to Chapter §116.310, currently

proposed under a separate rulemaking action, which will allow the use of electronic notifications for new source review permit renewals. This proposed change is anticipated to streamline the permitting process by providing a method of notification which is faster, more automated, and less costly compared to traditional postal mail.

§122.320, Public Notice

The commission proposes to amend to §122.320(b) to clarify that the applicant for an FOP must include the statement of basis in the materials available for review and copying at a public place in the county in which the site is to be located. The statement of basis sets forth the legal and factual basis for the draft permit conditions, and is considered part of the permit record, so it is important that the public have access to it as they do to other elements of the application and draft permit. This proposed change to the rule is a clarification and does not represent a change in agency practice or policy, as the agency's current public notice instructions already direct applicants to include a copy of the statement of basis with the permit materials which are made available to the public.

The commission proposes to re-letter the current language associated with §122.320(b)(6)(C) as §122.320(b)(6)(D), to allow for the addition of the statement of basis to the list of items under §122.320(b)(6). The commission also proposes several minor grammatical corrections and updates to outdated references throughout §122.320.

§122.345, Notice of Proposed Final Action

The commission proposes to amend §122.345(a) to add an option for the executive director to provide notice of a proposed final permit action by electronic communication, rather than by traditional first-class postal mail. This change is necessary to implement HB 4181, which revised THSC, §382.0562(a) to add electronic communication as an option for these notifications. Allowing the use of electronic methods of communication is anticipated to streamline the permitting process by providing a method of notification which is more efficient and less costly compared to traditional postal mail.

§122.503, Application Revisions for Changes at a Site

The commission proposes an amendment to §122.503(c)(1)(A) which would add a reference to Chapter 106. This proposed change is necessary because some sites operating under a General Operating Permit use a Chapter 106 permit by rule as their authorization, and must comply with those requirements in addition to any applicable requirements of Chapter 116. This proposed rule change does not impose any new requirements, but is necessary to correctly reflect all the ways in which a facility may be authorized.

§122.504, Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or

Rescinded

The commission proposes an amendment to §122.504(a)(2)(A) which would add a reference to Chapter 106. This proposed change is necessary because some sites operating under a General Operating Permit use a Chapter 106 permit by rule as their authorization, and must comply with those requirements in addition to any applicable requirements of Chapter 116. This proposed rule change does not impose any new requirements, but is necessary to correctly reflect all the ways in which a facility may be authorized.

§122.505, Renewal of the Authorization to Operate under a General Operating Permit

The commission proposes an amendment to §122.505(b)(1) to add electronic communication as an available method for the executive director to provide notification to holders of a general operating permit that their authorization to operate under the permit is scheduled for review. This change is similar to the proposed change to §122.241 as discussed previously. The proposed change is anticipated to streamline the permitting process by providing a method of notification which is faster, more automated, and less costly compared to traditional postal mail.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget & Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for any other units of state or local government.

The proposed rules are needed to comply with HB 4181, which allows the executive director to utilize electronic notification instead of traditional mail, when sending notices of a proposed final permit action. In addition, the rules provide clarification and update references.

The proposed rulemaking requires Title V permit holders to submit a compliance certification after an issued permit has been voided or after any change of ownership in §122.146 and expands the list of actions which require the submittal of a certificate of accuracy and completeness signed by a responsible official in §122.165. In §122.210, it clarifies that the executive director may combine multiple permits into a single permit or divide single permits into multiple permits during a permit revision and in §122.241 it allows for the use of electronic notification to inform permit holders that their operating permit is scheduled for review. The proposed rulemaking specifies that an applicant for an FOP must include the statement of basis in the permit materials available for public review in §122.320, allow the executive director to use electronic notification to send notice of a proposed final permit action in §122.345, and to notify holders of a general operating permit that their permit is scheduled for review in §122.505. Finally, the proposed rulemaking provides technical corrections and removes obsolete language in §§122.204, 122.503 and 122.504.

The proposed rulemaking allows the executive director to send several types of FOP

notices electronically. The utilization of electronic notification may result in a cost savings for the agency. The annual cost to mail notices required by §§122.241, 122.345 and 122.505 varies considerably from a low of approximately \$8,000 to a high of approximately \$22,000 per year. Using a midpoint of this range, the estimated cost savings would be approximately \$15,000 per year.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen from the implementation of the proposed rules would be compliance with state law (HB 4181), increased agency efficiency when sending out federal air operating permit notices, clearer applicable requirements for the regulated community and the public, and consistency with corresponding federal regulations.

The proposed changes are not expected to have fiscal implications for businesses or individuals. The proposed amendments would revise agency rules to reflect existing guidance and practices which are already in place, and to make clarifications which impose no new requirements.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not

adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities. The proposed rules are necessary to implement HB 4181.

Small Business and Micro-Business Assessment

The commission determined that no adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking is in effect. The proposed amendments are not expected to have fiscal implications for businesses or individuals.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect small or micro-businesses for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission reviewed this proposed rulemaking and determined that a Government Growth Impact Statement assessment is not required because the proposed rules do not: create or eliminate a government program; require the creation or elimination of new/existing employee positions; require an increase or decrease in future legislative appropriations to the agency; create a new regulation; expand or limit an existing regulation; or increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there would be an adverse impact on the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it 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 requirements to prepare a regulatory impact analysis (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 proposed amendments to Chapter 122 to implement HB 4181 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, the amendments would give the commission the option of providing notice to permit applicants and permit commenters of a proposed final action on an FOP under Chapter 122 by an electronic method or system.

While the primary purpose of the rulemaking is to revise Chapter 122 to include the option to use an electronic method or system to provide notice of proposed final action on an FOP, this rulemaking also includes several unrelated proposed amendments to Chapter 122. These include expanding the use of electronic communication to notify FOP holders that their permits are due for renewal, specifying that permit holders are required to provide a compliance certification or a signed certification of accuracy in certain additional circumstances, and various other clarifications and corrections to the rules. Because these proposed rules would modify administrative procedures for notification to permit holders of renewals of FOPs, specify requirements for compliance certification and signed certification of accuracy, and make other clarifications and corrections, the amendments do not add significant

permitting requirements. Therefore, these proposed amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a RIA is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and does not exceed a requirement of a delegation agreement or contract to implement a state or federal program. Finally, this rulemaking is not proposed solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble.

The requirement to provide a fiscal analysis of regulations in the Texas Government

Code was amended by Senate Bill (SB or bill) 633 during the 75th Texas 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 RIA 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 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. The commission contends that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rule may

have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the Federal Clean Air Act and, in fact, creates no additional impacts since the proposed rule does not exceed the requirement to attain and maintain the National Ambient Air Quality Standards or any other federal standard. For these reasons, the proposed rule falls under the exception in Texas Government Code, §2001.0225(a), because it is required by, and does not exceed, federal law.

The commission consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature 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 substantially complied with the requirements of Texas Government Code, §2001.0225.

The primary purpose of the proposed amendments is to give the commission the option of providing notice to permit applicants and permit commenters of a proposed final action on an FOP under Chapter 122 by an electronic method or system. An additional purpose is to address other parts of Chapter 122 that require clarification, as discussed elsewhere in this preamble. The proposed amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, Chapter 382, and the Texas Water Code, which are cited in the Statutory Authority sections of this preamble. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of

Comments section of this preamble.

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 the Texas Constitution, §17 or §19, Article I or 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 proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to give the commission the option of providing notice by an electronic method or system to permit applicants and permit commenters of a proposed final action on an FOP under Chapter 122. An additional purpose is to address other parts of Chapter 122 that require clarification, as discussed elsewhere in this preamble. The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that

would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed 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(1)). The proposed rules amend and update rules that govern the FOPs Program, including amendments which allow for certain notices to be sent to permit holders electronically and revise certain requirements for the

documentation associated with certain permit actions. 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 §501.32). This rulemaking complies with 40 CFR Part 70, State Operating Permit Programs. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments specify that holders of FOP would be required to submit compliance certifications for situations involving the voidance of an FOP or any change of ownership of the permitted site. In addition, the proposed amendments specify that the owner or operator must provide a signed certification of accuracy and completeness when submitting documentation for certain additional permit actions.

Finally, the proposed amendments require that applicants for an FOP include a copy of the Statement of Basis with the permit materials made available for public comment. These proposed requirements impose minimal burden and are already practiced through existing guidance and policy.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on June 22, 2018, at 10:00 A.M. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-

3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference

Rule Project Number 2018-003-116-AI. The comment period closes on June 26, 2018.

Copies of the proposed rulemaking can be obtained from the commission's website at

https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Michael Wilhoit, TCEQ Air Permits Division, Operational Support Section, (512) 239-1222.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 4: PERMIT CONTENT

§122.143, §122.146

Statutory Authority

The rules are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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 any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rules are also proposed 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 (TCAA); 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, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary

to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling, monitoring and certification of compliance of the permitted federal source as a condition of the permit and a periodic report of sampling and monitoring results and certification of compliance; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The proposed rule would implement THSC, §§382.051, 382.0514, 382.054, 382.0541, and 382.0543.

§122.143. General Terms and Conditions.

Unless otherwise specified in the permit, the following general terms and conditions shall become terms and conditions of each permit.

(1) Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or of the United States Environmental Protection Agency (EPA), except for those requirements addressed by a permit shield.

(2) The term of the permit shall not exceed five years from the date of initial issuance or renewal of the permit. The authorization to operate under a general operating permit shall not exceed five years from the date the authorization was granted or renewed.

(3) Consistent with the authority in Texas Health and Safety Code, Chapter 382, Subchapter B (Powers and Duties of Commission), the permit holder shall allow representatives from the commission or the local air pollution control program having jurisdiction to do the following:

(A) enter upon the permit holder's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) access and copy any records that must be kept under the conditions of the permit;

(C) inspect any emission unit, equipment, practices, or operations regulated or required under the permit; and

(D) sample or monitor substances or parameters for the purpose of assuring compliance with the permit at any time.

(4) The permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit. Except as provided for in paragraph (5) of this section, any noncompliance with either the terms or conditions codified in the permit or the provisional terms and conditions, if any, constitutes a violation of the Federal Clean Air Act [FCAA] and the Texas Clean Air Act [TCAA] and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit.

(5) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal or before the granting of a new authorization to operate.

(6) In every case, the applicable requirements and state-only requirements are always enforceable.

(7) The permit may be reopened for cause and revised or terminated. Permit terms or conditions remain enforceable regardless of the following:

(A) the filing of a request by the permit holder for a permit revision, reopening, or termination;

(B) a notification of planned changes or anticipated noncompliance; or

(C) a notice of intent by the executive director for a permit reopening or termination.

(8) The executive director may request any information necessary to determine compliance with the permit or whether cause exists for revising, reopening, or terminating the permit. The permit holder shall submit the information no later than 60 days after the request, unless the deadline is extended by the executive director. Upon request, the permit holder shall also furnish to the executive director

copies of records required to be kept by the permit, including information claimed to be confidential.

(9) If a state-only requirement is determined by the commission to be an applicable requirement, the permit holder shall submit an application for a significant permit revision for the incorporation of the requirement into the permit as an applicable requirement. The application shall be submitted no later than 12 months after the determination by the commission that the requirement is an applicable requirement.

(10) The permit holder shall pay fees to the commission consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(11) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(12) The permit does not convey any property rights of any sort, or any exclusive privilege.

(13) A copy of the permit shall be maintained at the location specified in the permit.

(14) For general operating permits, a copy of the permit, the enforceable general operating permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(15) Any report or [annual] compliance certification required by a permit to be submitted to the executive director shall contain a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(16) Representations in acid rain applications and applicability determinations, and the bases for the determinations in general operating permit applications are conditions under which the permit holder shall operate.

(17) No emissions from emission units addressed in the permit shall exceed allowances lawfully held under the acid rain program.

(18) State-only requirements will not be subject to any of the following requirements of this chapter: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

§122.146. Compliance Certification Terms and Conditions.

Unless otherwise specified in the permit, the following compliance certification requirements shall become terms and conditions of the permit.

(1) The permit holder shall certify compliance with the terms and conditions of the permit as follows: [for at least each 12-month period following initial permit issuance.]

(A) The permit holder shall certify compliance for at least each 12-month period following initial permit issuance;

(B) The permit holder shall certify compliance after the voidance of an issued permit, covering the period from the date of the last certification to the date the permit is voided; and

(C) The permit holder shall certify compliance after the effective date of any change of ownership of the permitted emission unit(s). The certification shall cover the period from the date of the last certification to the effective date of the change of ownership.

(2) A compliance [The] certification shall be submitted to the executive director and the United States Environmental Protection Agency (EPA) administrator

within [no later than] 30 days of any [after the end of the] certification period or event listed under paragraph (1) of this section.

(3) The executive director shall make a copy of the compliance certification accessible to the EPA.

(4) The certification shall be based on at a minimum, but not limited to, the monitoring method (or recordkeeping method, if appropriate) required by the permit to be used to assess compliance. If necessary, the permit holder shall identify any other material information that must be included in the certification to comply with Federal Clean Air Act [FCAA], §113(c)(2), which prohibits knowingly making a false certification or omitting material information.

(5) Each [The annual] compliance certification shall include or reference the following information:

(A) the identification of each term or condition of the permit for which the permit holder is certifying compliance, the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data;

(B) for emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period;

(C) for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, the following information indicating the potentially intermittent compliance status of the emission unit:

(i) the identification of the emission unit;

(ii) the applicable requirement for which a deviation occurred;

(iii) the monitoring method (or recordkeeping method, if appropriate) used to assess compliance;

(iv) the frequency with which sampling, monitoring, or recordkeeping was required to be conducted by the monitoring or recordkeeping requirement of the permit; and

(v) the total number of times that the assessment required by the monitoring or recordkeeping method specified in the permit indicated that a deviation had occurred;

(D) the identification of all other terms and conditions of the permit for which compliance was not achieved; and

(E) the [annual] compliance certification does not need to include any information regarding facilities identified as de minimis under §116.119 of this title (relating to De Minimis Facilities or Sources) unless the facilities or sources are subject to an applicable requirement.

(6) The executive director may request additional information if necessary to determine the compliance status of an emission unit.

SUBCHAPTER B: PERMIT REQUIREMENTS

DIVISION 5: MISCELLANEOUS

§122.165

Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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 any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed under Texas Health and Safety Code (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, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary

to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling, monitoring and certification of compliance of the permitted federal source as a condition of the permit and a periodic report of sampling and monitoring results and certification of compliance; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The proposed rule would implement THSC, §§382.051, 382.0514, 382.054, 382.0541, and 382.0543.

§122.165. Certification by a Responsible Official.

(a) The following documents shall include a signed certification of accuracy and completeness:

(1) applications for initial permit issuance;

(2) applications for revisions;

(3) applications for reopenings;

(4) applications for renewals;

(5) applications for general operating permits;

(6) general operating permit application revisions;

(7) reports required by the permit; [and]

(8) [annual] compliance certifications required by §122.146 of this title (relating to Compliance Certification Terms and Conditions); [.]

(9) requests to void an issued permit;

(10) requests to withdraw a permit application;

(11) off-permit notices; and

(12) operational flexibility notices.

(b) The certification of accuracy and completeness shall include the following statement: "I certify that, based on information and belief formed after reasonable inquiry, the statements and information contained in the attached documents are true, accurate, and complete."

(c) The certification shall be signed by the responsible official, who shall be one of the following:

(1) for a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) the delegation of authority to such representatives is approved in advance by the permitting authority;

(2) for a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) for a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the United States Environmental Protection Agency [EPA]); or

(4) for affected sources:

(A) the designated representative insofar as actions, standards, requirements, or prohibitions under Federal Clean Air Act [FCAA], Title IV or the regulations promulgated thereunder are concerned; and

(B) the designated representative, the alternate designated representative, or a person meeting the provisions of paragraphs (1), (2), or (3) of this subsection for any other purposes under 40 Code of Federal Regulations Part [CFR] 70.

(d) The responsible official need not be the same person for each required submittal, and the selection of a responsible official does not preclude the naming of a separate technical contact.

(e) The duly authorized representative need not be the same person for each required submittal, and the selection of a duly authorized representative does not preclude the naming of a separate technical contact.

(f) If the responsible official for the permit changes, the permit holder must maintain documentation of the change with permit. The permit holder must notify the executive director of any change in the responsible official no later than at the next submittal requiring certification under this chapter.

**SUBCHAPTER C: INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND
RENEWALS**

DIVISION 1: INITIAL PERMIT ISSUANCES

§122.204

Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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 any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed 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 (TCAA); 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, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the

commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The proposed rule would implement House Bill 4181 (85th Texas Legislature, 2017), and THSC, §§382.051, 382.054, 382.0541, and 382.0543.

§122.204. Temporary Sources.

(a) A temporary source is a stationary source which changes location to another site at least once during the term of the permit [any five-year period].

(b) An owner or operator of any temporary source subject to the requirements of this chapter, shall apply to the executive director for a permit consistent with this chapter.

(c) Each temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter or require a revision to any existing permit at the site.

(d) Permit holders shall maintain records of the duration of the stay at a site of any temporary source.

(e) A single permit may be issued authorizing similar operations by the same temporary source at multiple temporary locations.

(f) The temporary source permit holder shall notify the executive director at least ten days in advance of each change in location, unless the executive director allows for a shorter notice due to an emergency.

(g) No affected unit subject to the acid rain program shall be permitted as a temporary source.

**SUBCHAPTER C: INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND
RENEWALS**

DIVISION 2: PERMIT REVISIONS

§122.210

Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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 any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed 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 (TCAA); 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, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the

commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The proposed rule will implement House Bill 4181 (85th Texas Legislature, 2017), and THSC, §§382.051, 382.054, 382.0541, and 382.0543.

§122.210. General Requirements for Revisions.

(a) The permit holder shall submit an application to the executive director for a revision to a permit for those activities at a site which change, add, or remove one or more permit terms or conditions.

(b) The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the United States Environmental Protection Agency [EPA].

(c) Provisional terms and conditions are not eligible for a permit shield.

(d) The permit holder may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision submitted.

(e) Changes qualifying as administrative permit revisions may be processed as minor or significant permit revisions at the permit holder's discretion.

(f) Changes qualifying as minor permit revisions may be processed as significant permit revisions at the permit holder's discretion.

(g) During a permit revision, and at the discretion of the executive director, multiple permits for the site may be combined into a single permit, or a single permit may be divided into multiple permits, provided that all requirements of this chapter are met.

(h) [(g)] General operating permits and authorizations to operate under general operating permits are not subject to the permit revision requirements of this

subchapter, but instead are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

**SUBCHAPTER C: INITIAL PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND
RENEWALS**

DIVISION 4: PERMIT RENEWALS

§122.241

Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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 any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed 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 (TCAA); 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, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary

to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; and THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits.

The proposed rule would implement THSC, §§382.051, 382.054, 382.0541, and 382.0543.

§122.241. Permit Renewals.

(a) The permit shall expire no later than five years from initial issuance or renewal.

(b) The permit holder shall submit a timely and complete application under §122.133 and §122.134 of this title (relating to Timely Application and Complete Application) for renewal.

(c) The executive director shall provide written notice to the permit holder that the permit is scheduled for review.

(1) The notice will be provided by mail or electronic communication no later than 12 months before the expiration of the permit.

(2) The notice shall specify the procedure for submitting an application.

(3) Failure to receive notice does not affect the expiration date of the permit or the requirement to submit a timely and complete application.

(d) Any information under the phased application process, that is not included in the permit by the first permit renewal, shall be submitted to the executive director with the renewal application.

(e) The permit, when renewed, shall contain specific terms and conditions for each emission unit consistent with §122.142 of this title (relating to Permit Content Requirements).

(f) After the renewal application is submitted and before the permit is renewed, the permit holder may operate the changes at a site in accordance with this subchapter

provided that the renewal application is updated to include any provisional terms and conditions. These changes shall be codified in the permit through the renewal process.

(g) Permit expiration terminates the owner's or operator's right to operate, unless a timely and complete renewal application has been submitted. After a timely and complete application submittal, the permit holder may continue to operate under the terms and conditions of the previously issued permit until final action is taken on the permit renewal application.

**SUBCHAPTER D: PUBLIC ANNOUNCEMENT, PUBLIC NOTICE, AFFECTED STATE
REVIEW, NOTICE AND COMMENT HEARING, NOTICE OF PROPOSED FINAL ACTION,
EPA REVIEW, AND PUBLIC PETITION**

§122.320, 122.345

Statutory Authority

The rules are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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 any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rules are also proposed 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 (TCAA); 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, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the

commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0561, concerning Federal Operating Permits; Hearings, which authorizes the commission to conduct a public hearing, hold a public comment period, and provide notice of the public comment period and opportunity for a hearing in accordance with THSC, §382.056, on applications for issuance, revision, reopening, or renewal of a federal operating permit; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications; THSC, §382.0562, concerning Notice of Decision, which requires the commission to send notice of a proposed final action on a federal operating permit; THSC, §382.0563, concerning Public Petition to the Administrator, which authorizes the commission to provide for public petitions to the administrator; and THSC, §382.0564, concerning Notification to Other Governmental Entities, which authorizes the commission to allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits.

The proposed rules would implement House Bill 4181 (85th Texas Legislature, 2017), and THSC, §§382.051, 382.054, 382.0541, 382.056, 382.0561, 382.0562, 382.0563, and 382.0564.

§122.320. Public Notice.

(a) Public notice requirements apply to initial issuances, significant permit revisions, reopenings, and renewals.

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

(1) the permit [application] number;

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

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

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

(5) for significant permit revisions, the air pollutants with emission changes;

(6) the location and availability of the following:

(A) the complete permit application;

(B) the draft permit;

(C) the statement of basis; and

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

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

(8) a statement that a person who may be affected by the emission of air pollutants from the site is entitled to request a notice and comment hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; [and]

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

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

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

(c) One notice may be published for multiple permits at a site with the approval of the executive director.

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

(e) The applicant shall submit a statement to the executive director, with a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the sign required by subsection (h) of this section has been posted consistent with the provisions of that subsection.

(f) The executive director shall make a copy of the permit application, the draft permit, and any required notices accessible to the United States Environmental Protection Agency [EPA].

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

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

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

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

(B) The sign shall be headed by the words "APPLICATION FOR FEDERAL OPERATING PERMIT".

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

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

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

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

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

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

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

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

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

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

(4) One sign may be posted for multiple permits at a site with the approval of the executive director.

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

(j) During the 30-day public notice comment period, any person who may be affected by emissions from a site regulated under this chapter may request in writing a notice and comment hearing on the draft permit.

(k) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this chapter.

(l) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

(m) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the site is located or proposed to be located. Notice of this public meeting shall be provided in the notice required by subsection (b) of this section.

§122.345. Notice of Proposed Final Action.

(a) After the public comment period or the conclusion of any notice and comment hearing, the executive director shall send notice of the proposed final action on the application by first-class mail or electronic communication [of the proposed final action on the application] to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft permit and the reasons for the change;

(3) a description and explanation of the process for public petitions to the United States Environmental Protection Agency [EPA];

(4) the date by which the petition must be filed; and

(5) a statement that any person affected by the decision of the executive director may petition the Administrator.

SUBCHAPTER F: GENERAL OPERATING PERMITS

DIVISION 1: PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.503 - 122.505

Statutory Authority

The rules are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; 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 any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed 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 (TCAA); 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, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary

to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling, monitoring and certification of compliance of the permitted federal source as a condition of the permit and a periodic report of sampling and monitoring results and certification of compliance; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.0564, concerning Notification to Other Governmental Entities, which authorizes the commission to allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits.

The proposed rules would implement House Bill 4181 (85th Texas Legislature, 2017), and THSC, §§382.051, 382.0514, 382.054, 382.0541, 382.0543, and 382.0564.

§122.503. Application Revisions for Changes at a Site.

(a) The permit holder shall submit an application for a new authorization to operate to the executive director for the following activities at a site:

(1) a change in any applicability determination or the basis of any determination in the general operating permit application; or

(2) a change in the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit.

(b) The application for a general operating permit under this subsection shall contain at a minimum the following:

(1) a description of each change;

(2) a description of the emission unit affected;

(3) any changes in the applicability determinations;

(4) any changes in the bases of the applicability determinations;

(5) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(6) a statement that the emission units qualify for the general operating permit; and

(7) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director except changes to deviation limits as defined in §122.10 of this title:

(1) the permit holder complies with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and Chapter 106 of this title (relating to Permits by Rule), as applicable;

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title;

(2) the permit holder submits to the executive director the application before the change is operated;

(3) the permit holder maintains, with the authorization to operate under the general operating permit the application until the executive director grants a new authorization to operate; and

(4) the permit holder operates under the representations in the general operating permit application, as specified in §122.140 of this title (relating to Representations in Application).

(d) The permit holder need not comply with the representations in the application that have been replaced by provisional terms and conditions before the granting of a v new authorization to operate.

(e) In every case, the applicable requirements and state-only requirements are always enforceable.

(f) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who qualify.

(g) If the emission units addressed in the application no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h) If it is later determined that the permit holder does not qualify for a revision applied for under this section, the permit holder may be subject to enforcement action for operation without a permit.

§122.504. Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded.

(a) If the applicability determinations or the bases for the determinations in the general operating permit application change due to the promulgation or adoption of an applicable requirement or state-only requirement or the revision or rescission of a

general operating permit issued by the executive director, the following requirements apply.

(1) The permit holder shall submit an application for a new authorization to operate containing at a minimum the following information:

(A) a description of the emission unit affected;

(B) any changes in the applicability determinations;

(C) the basis of each determination identified under subparagraph (B) of this paragraph;

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(E) a statement that the emission units qualify for the general operating permit; and

(F) certification in accordance with §122.165 of this title (relating to Certification [certification] by a Responsible Official).

(2) The permit holder shall comply with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and Chapter 106 of this title (relating to Permits by Rule), as applicable;

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title.

(3) If the application is required as the result of the promulgation or adoption of an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) record the information required in paragraph (1)(A) - (E) of this subsection before the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement;

(B) submit an application for a new authorization to operate no later than 90 days after the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement; and

(C) maintain the information required in paragraph (1)(A) - (E) of this subsection with the authorization to operate until a new authorization is granted.

(4) If the application is required as the result of the revision of a general operating permit that is not based on a change in an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) submit the application no later than 90 days after the issuance of the general operating permit; and

(B) maintain the application with the authorization to operate until the general operating permit is revised.

(5) If the application is required as the result of a revision of a general operating permit to add periodic monitoring or compliance assurance monitoring requirements, the following requirements apply.

(A) The application shall include, at a minimum, the following:

(i) the identification of the emission unit;

(ii) the emission limitation or standard subject to compliance assurance monitoring (CAM) or periodic monitoring;

(iii) an appropriate monitoring option provided in the general operating permit;

(iv) if not defined by the monitoring option selected, a deviation limit;

(v) a justification for any deviation limit proposed under clause (iv) of this subparagraph in accordance with subparagraph (B) or (C) of this paragraph; and

(vi) any information required by the executive director to evaluate the requirements.

(B) Proposed CAM options specified in the application shall be designed to provide reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(C) Proposed periodic monitoring options specified in the application shall be sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement.

(D) The permit holder shall provide justification for any deviation limit according to one of the following.

(i) The permit holder shall submit the following performance test data:

(I) control device operating parameter data from an applicable performance test conducted under conditions specified by the applicable rule;

(II) if the applicable rule does not specify testing conditions or only partially specifies testing conditions, control device operating parameter data

from an applicable performance test conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the emission unit; and

(III) a statement that no changes to the emission unit, including control device, have taken place that could result in a significant change in the control system performance, indicators (such as emissions, control device parameters, process parameters, or inspection and maintenance activities) to be monitored, or deviation limits since the performance test was conducted.

(ii) The permit holder shall submit manufacturer's recommendations, engineering calculations, and/or historical data.

(E) The executive director will not grant a request for a new authorization to operate under a general operating permit if the deviation limits have been deemed unacceptable. In such case, revised justification for deviation limits under subparagraph (D) of this paragraph shall be submitted for approval.

(F) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit holder shall submit a monitoring option from the general

operating permit that includes the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

(G) The permit holder shall begin operation of the monitoring no later than 180 days after the issuance of the revised general operating permit.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the application qualify for the revised general operating permit;

(2) the applicability determinations remain unchanged; and

(3) the basis for each applicability determination remain unchanged.

(c) If a general operating permit is rescinded and not replaced, the authorization to operate under the general operating permit is revoked. The permit holder must apply for another operating permit no later than the date the general operating permit is rescinded.

(d) If as a result of the revision of a general operating permit the permit holder no longer qualifies for the general operating permit, the permit holder must apply for another operating permit no later than the date of issuance of the revised general operating permit.

(e) Those representations in the application not affected by the revision of a general operating permit remain conditions under which the permit holder shall operate.

(f) In every case, the applicable requirements and state-only requirements are always enforceable.

(g) The permit holder need not comply with the representations in the application or the terms and conditions codified in the general operating permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

§122.505. Renewal of the Authorization to Operate under a General Operating Permit.

(a) Authorizations to operate under general operating permits shall expire no later than five years from the date of the initial authorization to operate or renewal of the authorization to operate.

(b) The executive director shall provide written notice to the permit holder that the authorization to operate under the general operating permit is scheduled for review.

(1) The notice will be provided by mail or electronic communication no later than 12 months before the expiration of the authorization to operate under the general operating permit.

(2) The notice shall specify the procedure for submitting a renewal application.

(3) Failure to receive notice does not affect the expiration date of the authorization or the requirement to submit a timely and complete application.

(c) A renewal application shall be submitted by the permit holder to the executive director at least six months, but no earlier than 18 months, before the date of expiration of the authorization to operate under the general operating permit.

(d) The executive director shall grant a request for a renewal of an authorization to operate under a general operating permit to applicants who submit a complete application under §122.243 of this title (relating to Permit Renewal Procedures) and who qualify for the general operating permit.

(e) Expiration of the authorization to operate terminates the permit holder's right to operate unless a timely and complete renewal application has been submitted. After a timely and complete renewal application is submitted, the permit holder may continue to operate under the terms and conditions of the previous authorization to operate until the new authorization to operate is granted or denied.

(f) In determining whether and under what conditions an authorization to operate under a general operating permit should be renewed, the executive director shall consider the following:

(1) whether the general operating permit, in conjunction with the general operating permit application, provides for compliance with all applicable requirements and an accurate listing of state-only requirements; and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(g) The executive director shall make a copy of the renewal application, general operating permit, and any required notices accessible to the United States Environmental Protection Agency [EPA].