

The commission proposes amendments to §§116.10, 116.11, 116.14, 116.110, 116.111, 116.112, 116.114-116.118, 116.120-116.126, 116.130-116.134, 116.136, 116.137, 116.140, 116.141, 116.143, 116.310-116.314, 116.410-116.413, 116.415-116.419, 116.610, 116.611, 116.614, 116.615, 116.617, 116.620, 116.621, 116.710, 116.711, 116.714, 116.715, 116.718, 116.721, 116.750, and 116.760, concerning the State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification and new §116.109, concerning the purpose and scope of Chapter 116 and §116.419, concerning the expiration of emergency orders.

The commission also proposes the repeal of §§116.12, 116.150, 116.151, 116.160-116.163, 116.170, 116.174, and 116.175, concerning nonattainment review definitions, nonattainment review, prevention of significant deterioration review, and emission reductions: offsets, respectively.

EXPLANATION OF PROPOSED RULES. The purpose of the repeals is to allow for the adoption of new requirements contained in §§126.10, 126.150, 126.151, 126.160-126.163, and 126.170-126.172, concerning nonattainment review definitions, nonattainment review, prevention of significant deterioration review, and emission reductions: offsets, respectively. Chapter 126, concerning Federal New Source Review Requirements for Control of Air Pollution, is proposed concurrently with this Chapter 116 rulemaking. The repealed sections of Chapter 116 are essentially transferred to the new Chapter 126.

The federally required major new source review (NSR) program (i.e., Prevention of Significant Deterioration (PSD) and nonattainment permitting programs) that the commission proposes to repeal from Chapter 116 will continue to be implemented as currently required in Chapter 116, except that the regulations for these programs will be moved, with minimal changes, to Chapter 126. The repeal of the major NSR program in Chapter 116 and the subsequent proposal of essentially the same major NSR program in Chapter 126 is being done solely to identify the applicable federal NSR requirements that will be codified in federal operating permits as required by 30 TAC Chapter 122, concerning Federal Operating Permits. There should be little or no change to procedures to obtain an NSR authorization under Chapters 116 and 126. In addition, there should be little or no change to the permits currently issued under Chapter 116.

The purpose of the proposed Chapter 116 amendments is to set forth the state-only requirements for the construction of any new facility or the modification of any existing facility which may emit air contaminants. These requirements will be enforceable under state law, but will not be part of the State Implementation Plan (SIP) upon approval by the United States Environmental Protection Agency (EPA) and will not be enforceable under federal law.

All references to federal new source review requirements will be removed from Chapter 116 and placed in the new proposed regulation, Chapter 126. The remaining portions of Chapter 116 will not be changed in substance. To minimize any potential duplication, when appropriate as determined by the executive director, a single permit document will be issued specifying both the terms and conditions for

the construction and operation of the new or modified facility under both Chapter 116 and Chapter 126. In addition, the rule amendments include some general "clean up" to Chapter 116 in order to properly reference 30 TAC Chapter 106, concerning Exemptions from Permitting, as well as other non-substantive editorial changes.

An issue paper has been prepared to supplement this preamble. The issue paper discusses in greater detail the background and rationale for the reorganization of Chapter 116 and the corresponding SIP revision. The issue paper is available for review at the Texas Natural Resource Conservation Commission (TNRCC), 12100 Park 35 Circle, Austin, and can also be obtained on request by calling the Office of Air Quality, Operating Permits Division, at (512) 239-1334. The commission invites comments on the contents of the issue paper.

REGULATORY REFORM. The proposed amendments to Chapter 116 do not contain all of the specific principles included with the ongoing efforts by the commission for regulatory reform. In the interest of having the proposed rules effective by the time the commission must submit a request for full program approval of the Operating Permits Program (January 26, 1998) to the EPA, the staff was allowed to do a partial regulatory reform effort.

However, the proposed amendments to Chapter 116 do include clarifications whenever practical and necessary to eliminate redundancies or inconsistencies. These clarifications do not involve substantive changes to the requirements of this chapter. For example, the words "Texas Air Control Board" have

been replaced by "Texas Natural Resource Conservation Commission" or "commission," as appropriate. Corrections have also been made to correctly cite newly adopted §101.6 and §101.7, concerning Upset Reporting and Recordkeeping Requirements and Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements. In addition, the correct reference to the New Source Review Permits Division is included in the proposed amendments to Chapter 116.

The following describes the proposed amendments to Chapter 116 by subchapter.

SUBCHAPTER A: DEFINITIONS. The commission proposes to amend Subchapter A by deleting those definitions that are identical or essentially the same as those in Chapter 101, concerning General Rules. As a result, in Chapter 116, the commission proposes to delete the definitions of “de minimis impact,” “emissions unit,” “federally enforceable,” and “nonattainment area” to eliminate redundancy.

In addition, the commission proposes to amend the definitions that reference exemptions from permitting by referring to Chapter 106. This is proposed in response to the recent revision to Chapter 116 that moved standard exemptions to Chapter 106. The definition of “allowable emissions” is being amended to delete the reference to federally enforceable certifications for exempted facilities. This is because Chapter 116 will no longer be federally enforceable after the SIP revision is approved by EPA.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS. The commission proposes to clarify the purpose and scope of Chapter 116 through new §116.109, which states that Chapter 116 sets forth the state-only requirements for the construction of any new facility or the modification of any existing facility which may emit air contaminants into the air. Section 116.109 also emphasizes that any person constructing a new facility or modifying an existing facility must also comply with requirements of Chapter 126, as appropriate. In order to minimize any duplication, §116.109 allows for a single permit document to be issued that contains the requirements of both Chapters 116 and 126 as determined by the executive director.

The commission proposes to amend §116.110, concerning Applicability, to reference standard permits that currently exist in Subchapter K of Chapter 321, concerning Concentrated Animal Feeding Operations; Chapter 332, concerning Composting; and Subchapter N of Chapter 330, concerning Landfill Mining. This amendment is proposed so that all the standard permits (for air emissions) currently available are referenced in Chapter 116.

The commission proposes to delete the operations certification requirements contained in §116.110(b) as a result of recommendations made by the TNRCC Regional Offices and the Office of Compliance. The commission decided that the operations certification requirement created unnecessary reporting and paperwork and could be implemented more effectively through Chapter 116 permits on a case-by-case basis.

The commission proposes §116.110(e) to clarify that emission limitations established under Chapter 116 are not federally enforceable because Chapter 116 is being proposed for removal from the SIP. For facilities that want to obtain federally enforceable limitations, §116.110(e) also states that a federally enforceable emission limitation may be obtained by procedures outlined in Subchapter I of Chapter 126, concerning Potential-to-Emit Limitations.

The commission proposes amendments to §116.111, concerning General Application, clarifying that New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) will be enforceable under Chapter 126 and not Chapter 116. Although §116.111 requires that facilities must be in compliance with NSPS and NESHAP before obtaining a Chapter 116 permit, these regulations will not be enforceable under Chapter 116 because they are federal requirements. In addition, the requirements to comply with nonattainment review or the PSD review were amended to reference Chapter 126. Section 116.111(5), concerning NESHAP requirements, was amended to reference 40 CFR Part 63, which includes the maximum achievable control technology standards promulgated by EPA.

Furthermore, §116.111(10) is added to clarify that facilities subject to review for constructed or reconstructed major sources of hazardous air pollutants under Federal Clean Air Act (FCAA), §112(g), Modifications, and 40 Code of Federal Regulations (CFR) Part 63, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, must comply with Subchapter K

of Chapter 126, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g)).

The commission proposes to amend §116.115, concerning General and Special Conditions, to make the correct reference to Chapter 106, as well as Subchapters D and E of Chapter 126, concerning nonattainment review and PSD review, respectively. Section 116.115 is also amended to include the §112(g) review under Subchapter K of Chapter 126 when considering whether to include a permit provision requiring a facility to obtain written approval before constructing a source under Chapter 106. Reference to Subchapter K of Chapter 126 is added because the commission wants to ensure that a facility subject to the federal permitting requirements of Subchapter K does not attempt to obtain an exemption. The commission proposes to amend §116.115(b)(3) by deleting reference to "Air Program," which no longer exists. Rather, reference to "appropriate regional office" remains.

The commission also proposes to amend §116.115(b)(9), concerning Compliance with Rules, to clarify that although a facility subject to Chapter 116 shall comply with the most stringent state rule or regulation, it must also comply with all applicable federal regulations required by Chapter 126.

The commission proposes to amend §116.116(d) to make the correct reference to Chapter 106.

The commission proposes to clarify §116.117, concerning Documentation and Notification of Changes to Qualified Facilities, by referencing nonattainment and PSD review in Subchapters D and E of Chapter 126, respectively rather than the existing sections in Chapter 116. Section 116.117 is also amended to include the §112(g) review under Subchapter K of Chapter 126 when considering whether a facility is eligible to make changes under §116.117. Reference to Subchapter K of Chapter 126 is added because the commission wants to ensure that a facility subject to the federal permitting requirements of Subchapter K does not make changes under §116.117.

A minor amendment is proposed in §116.118 that would add the word “or” in §116.118(a)(1). This is being done to correct a previous typographical error.

The commission proposes to amend §116.130, concerning Applicability of Public Notification and Comment Procedures, by allowing that a single public notice may satisfy the requirements of Chapter 116 and Chapter 126 when determined by the executive director. By allowing for a single public notice, any duplication in public comment procedures existing between Chapter 116 and Chapter 126 is eliminated. In addition, §116.131 and §116.132, concerning Public Notification Requirements and Public Notice Format, respectively, is amended by deleting reference to the requirements for public notice for PSD or nonattainment review. The public notice requirements for nonattainment and PSD review are proposed in Subchapter C of Chapter 126.

Furthermore, it should be noted that in an attempt to assist in the implementation of the commission's directive to facilitate the public notice process, the commission proposes to provide the phone number of the appropriate commission office to contact for further information as a part of the public notice required in §116.131(a)(10) rather than the phone number of the appropriate TNRCC regional office.

The commission proposes to amend §116.137, concerning Notification of Final Action, by deleting reference to nonattainment and PSD review which will be conducted under Subchapters D, and E, respectively of Chapter 126 and not Chapter 116. In addition, notification of final action by the commission will not be required if the executive director authorizes a combined public notice under §116.130(a) because notification of final action is not a federal permitting requirement.

The commission proposes to amend §116.140, concerning Applicability of Permit Fees, by deleting reference to operating permits and standard exemptions because these types of authorizations are no longer included in Chapter 116. Operating permits are issued under Chapter 122, concerning Federal Operating Permits, and exemptions from permitting are addressed under Chapter 106.

In addition, the commission proposes to amend §116.141, concerning Determination of Fees, to reference Subchapter E of Chapter 126 for applicability of PSD fees. Furthermore, §116.141(b)(1) is proposed to be amended to specify that any application for new or modified facilities controlled by the federal government will be charged a fee of \$450. The existing provision qualifies the fee requirement for federal government applications submitted after January 1987. Since all of the pre-1987

applications from the federal government have been acted on by the commission, this provision is no longer necessary. Finally, the commission proposes §116.141(f) to clarify that when an applicant is subject to the fee requirements of Subchapter E of Chapter 126, the fee requirements of Chapter 116 will not apply.

The commission proposes to amend §116.143 by correcting the TNRCC mailing address where permit fees are submitted. The previous mailing address was a street address rather than a post office box. In addition, §116.143(2) is amended to make the correct reference to Chapter 106.

SUBCHAPTER C: PERMIT RENEWALS. The commission proposes to delete the existing Subchapter C, concerning Permit Exemptions, since standard exemptions were recently moved from Chapter 116 to Chapter 106. As a result, the commission now proposes to rename the existing Subchapter C, Permit Renewals, and move all the requirements concerning permit renewals that currently exist in Subchapter D to Subchapter C. In addition, all of the remaining subchapters of Chapter 116 will be relettered.

The majority of the proposed amendments to Subchapter C are intended to clarify and simplify the reading of the text and are not intended to change the meaning. The only substantive change is proposed in §116.313, which would clarify that no additional renewal fee will be required for concurrent renewals of permits under Subchapter G of Chapter 126, concerning Permit Renewals.

SUBCHAPTER D: EMERGENCY ORDERS. The commission proposes to amend §116.410, concerning Emergency Orders, to clarify that the addition, replacement, or repair of facilities or control equipment subject to nonattainment review, PSD review, or review of major sources of air pollutants must comply with Subchapter H of Chapter 126 rather than the emergency order provisions provided in Chapter 116. Similarly, the commission proposes to amend §116.411(9), concerning Application for an Emergency Order, by adding a statement that the proposed construction authorized under §116.410 is not subject to nonattainment review, PSD review, or §112(g) review. These are being proposed because these types of federal new source review are conducted under Chapter 126 and not Chapter 116 and therefore would be required to seek an emergency order under Subchapter H of Chapter 126.

During the Texas 75th legislative session, Senate Bill (SB) 1876 was passed amending Water Code, Chapter 5, to add a new Subchapter L, concerning Emergency and Temporary Orders. The commission expects to complete rulemaking to implement SB 1876 prior to the adoption of the proposed revisions to Chapter 116 and the new Chapter 126. Both Chapter 116 and 126 will be revised to reflect the new statutory requirements for emergency orders at adoption.

The commission proposes a new §116.419, concerning the expiration of emergency orders. The new section proposes that emergency orders will expire 180 days from the date of issuance and can be renewed for a one-time extension of 180 days. This section is being proposed to be consistent with the new requirements of SB 1876.

SUBCHAPTER E: STANDARD PERMITS. The commission proposes amendments to §116.610, concerning Applicability of Standard Permits, to clarify that NSPS and NESHAP (including Maximum Achievable Control Technology (MACT) standards) will be enforceable under Chapter 126 and not Chapter 116. Although §116.610 requires that facilities must be in compliance with NSPS and NESHAP before obtaining a standard permit, these regulations will not be enforceable under Chapter 116 because they are federal requirements. In addition, §116.610(b) is being amended to reference the federal new source requirements contained in §126.111, concerning Applicability, rather than the applicability provisions of Chapter 116. This is being amended because federal new source review requirements will be included in Chapter 126 instead of Chapter 116. The commission proposes a new §116.610(d) to clarify that facilities subject to Subchapter K of Chapter 126 are not eligible for a standard permit under Chapter 116.

In addition, the commission proposes to amend §116.611(c) to require that a copy of the standard permit registration, along with any correspondence related to the registration, be maintained on-site or at the nearest staffed location. It is necessary to make the registration available to the executive director, or any air pollution control agency having jurisdiction so that compliance can be determined if necessary.

Furthermore, the commission proposes to delete the option for a facility to obtain a federally enforceable emission limitation under §116.611(c). The proposal deletes this option because Chapter 116 will no longer be federally enforceable by EPA because it will not be submitted as a part of the

SIP. If desired, facilities may obtain federally enforceable emission limitations through the registration provided in Subchapter I of Chapter 126, concerning Potential-to-Emit Limitations.

The commission proposes to amend §116.614, concerning Standard Permit Fees, by correcting the TNRCC mailing address where permit fees are submitted. The previous mailing address did not have the correct mail code or zip code.

The commission also proposes to amend §116.615(10), concerning Compliance with Rules, to clarify that although a facility subject to Chapter 116 shall comply with the most stringent state rule or regulation, it must also comply with all applicable federal regulations required by Chapter 126. The commission proposes to amend §116.620, concerning Installation and/or Modification of Oil and Gas Facilities, to reference the appropriate exemption under Chapter 106 rather than the former standard exemption. Similarly, §116.620(a)(13) is being amended to reference the appropriate nonattainment and PSD subchapters of Chapter 126 rather than the existing sections of Chapter 116. In addition, §116.620(a)(13) also includes reference to §112(g) review under Subchapter K of Chapter 126 because §112(g) review is considered a federal NSR requirement. If a facility is subject to Subchapters D, E, or K of Chapter 126, it cannot use the standard permit provided in §116.620, and instead must comply with the appropriate subchapter of Chapter 126.

The commission also proposes to amend §116.621, concerning Municipal Solid Waste Landfills, to refer to the correct exemption under Chapter 106 rather than the former standard exemption. Similarly,

§116.621(2)(F) is being amended to reference the appropriate nonattainment and PSD subchapters of Chapter 126 rather than the existing sections of Chapter 116. In addition, §116.621(2)(F) includes reference to §112(g) review under Subchapter K of Chapter 126 because §112(g) review is considered a federal NSR requirement. If a facility is subject to Subchapters D, E, or K of Chapter 126, it cannot use the standard permit provided in §116.621, and instead must comply with the appropriate subchapter of Chapter 126.

SUBCHAPTER F: FLEXIBLE PERMITS. Consistent with the proposal to delete §116.110(b), the commission proposes to delete the operations certification requirements contained in §116.710(b) as a result of recommendations made by the TNRCC Regional Offices and the Office of Compliance. The commission decided that the operations certification requirement created unnecessary reporting and paperwork and could be implemented more effectively through Chapter 116 permits on a case-by-case basis.

The commission also proposes amendments to §116.711, concerning Flexible Permit Applications, by clarifying that NSPS, NESHAP, and Maximum Achievable Control Technology (MACT) standards will be enforceable under Chapter 126 and not Chapter 116. Although §116.711 requires that facilities must be in compliance with NSPS, NESHAP, and MACT standards before being granted a flexible permit, these regulations will not be enforceable in Chapter 116 because they are federal requirements and will be incorporated into Chapter 126. Similarly, §116.711(7) and (8) are being amended to reference the

appropriate nonattainment and PSD subchapters of Chapter 126 rather than the existing sections of Chapter 116.

Furthermore, §116.711(10) is added to clarify that facilities subject to review for constructed or reconstructed major sources of hazardous air pollutants under FCAA, §112(g), Modifications, and 40 CFR Part 63, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, must comply with Subchapter K of Chapter 126, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g)).

Along the same lines, the commission proposes to amend §116.715, concerning General and Special Conditions, to reference the appropriate nonattainment and PSD subchapters of Chapter 126 rather than the existing sections of Chapter 116. In addition, §116.715(a) was amended to include the §112(g) review under Subchapter K of Chapter 126 when considering whether a facility is eligible for a flexible permit under §116.710. A reference to Subchapter K of Chapter 126 was added because the commission wants to ensure that a facility subject to the federal permitting requirements of Subchapter K is not authorized under §116.710. In addition, §116.715 is being amended to make the correct reference to Chapter 106.

In order to properly refer to the Engineering Services Section, the commission proposes to amend §116.715(c)(4) by deleting a reference to the Source and Mobile Monitoring Section.

The commission proposes to amend §116.715(c)(10), concerning Compliance with Rules, to clarify that although a facility subject to Chapter 116 shall comply with the most stringent state rule or regulation, it must also comply with all applicable federal regulations referenced in Chapter 126. In addition, the commission proposes to amend §116.721 and §116.750, concerning Amendments and Alterations and Flexible Permit Fee, respectively, to correctly reference Chapter 106 rather than the former Chapter 116 for standard exemptions.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications anticipated for state or local government as a result of enforcing or administering the sections.

While the commission does not believe that there will be significant fiscal impacts, the following paragraphs summarize potential impacts, which if they occur, are anticipated to be minor.

The proposed revisions to Chapter 116, the new Chapter 126, and the SIP revision are, for the most part, simply a reorganization of the existing sections of Chapter 116. The existing PSD and nonattainment permitting requirements of Chapter 116 will be moved to the new Chapter 126 and there should be minimal impact because, when appropriate, a single permit will be issued specifying both the terms and conditions for the facility under both Chapter 116 and 126. The requirements remaining in Chapter 116 will continue to apply to all sources in the state. This reorganization, by itself, is not expected to have any new fiscal impact on the regulated community.

The SIP revision is intended to remove the existing Chapter 116 and Chapter 106 from the SIP. The impact of this would be that authorizations issued under those chapters would no longer be federally enforceable and would become state-only requirements. This is not expected to have a significant fiscal impact on applicants.

Since the proposed revisions to Chapter 116, the new Chapter 126, and the corresponding SIP revision are being made to implement specific requirements of the federal operating permit program required by 40 CFR Part 70, if the proposal is not approved, then it is possible that the EPA will implement a federal version of the operating permit program under 40 CFR Part 71 (Part 71). If Part 71 is actually implemented in Texas, it is possible that the regulated community will be required to pay additional fees to the EPA that are approximately 25% higher than that currently charged by the commission. The regulated community might also have to submit applications to the EPA which are significantly different from those required by the commission. At this time, it is difficult to predict the actual fiscal impact of a Part 71 program. Part 71 programs are intended to be of short duration, so it is entirely possible for a state to be subject to Part 71 for a short period of time and not have any fiscal impact to the state or to the regulated community.

PUBLIC BENEFIT. Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the current minor new source review (MNSR) program required by Chapter 116 and the exemptions from that program in Chapter 106 can continue to operate without the oversight of the EPA via the federal

operating permit program. The inclusion in the SIP of the new Chapter 126, federal MNSR program, as the SIP program for minor MNSR will enable Texas to be in compliance with the federal laws for NSR programs. This will also allow Texas to obtain full program approval of the commission's federal operating permit program, thus avoiding the implementation of 40 CFR Part 71, the EPA administered operating permit program. There will be no significant effect on the regulated community or small businesses. There is no anticipated significant additional economic cost to persons who are required to comply with the sections as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a takings impact assessment for the proposed rulemaking under Texas Government Code, §2007.043. The following is a summary of that assessment.

The commission was granted interim program approval of its federal operating permits program in the June 25, 1996, issue of the *Federal Register* (61 FR 32693). Interim program approval provides the commission with the authority to implement the operating permits program in Texas for two years. As a condition of that approval, the commission must revise its definition of "applicable requirement" to include MNSR authorizations. MNSR programs are required by the FCAA, §110(a)(2)(C) and 40 CFR Part 51, §§51.160-51.164. The proposed rulemaking and SIP revision are intended to meet the requirements of the FCAA and of 40 CFR Part 51 as well as the requirements noted in the June 25, 1996, notice of interim approval.

The proposed amendments to Chapter 116, the new Chapter 126, and the related SIP revisions are being proposed to identify the applicable federal NSR requirements that will be codified as “applicable requirements” in federal operating permits as required by Chapter 122. There will be no burden on private real property because this rulemaking and SIP revision is intended to simply divide an existing chapter, Chapter 116, into two chapters, one that is federally enforceable (Chapter 126) and one that is state enforceable (Chapter 116). The proposed rules will not make existing requirements any less stringent because facilities must still meet the requirements of Chapters 106 and 116 even though these chapters will not be in the SIP. The proposed rulemaking and SIP revision will achieve its stated purpose by addressing the EPA’s interim program approval criteria.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The commission has determined that this proposed rulemaking action is 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission’s rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and §505.22(a), and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with applicable CMP goals and policies. The commission has reviewed this proposed rulemaking action for consistency, and has determined that this proposed rulemaking action is consistent with the applicable CMP goals and policies.

The proposed changes to Chapter 116 and the newly proposed Chapter 126 simply take existing NSR requirements and split them into two chapters. All references to federal NSR requirements will be removed from Chapter 116 and placed in Chapter 126.

The corresponding SIP revision (the removal of Chapter 116 and Chapter 106 from the SIP and the inclusion of Chapter 126 as the NSR SIP program) will distinguish the requirements of federal NSR from the requirements of state NSR. Chapter 126 also proposes a new federal MNSR program that meets the requirements in FCAA, §110(a)(2)(C) and 40 CFR Part 51, §§51.160-51.164.

The proposed rules and SIP revision are consistent with the goals and policies of the CMP because they are being proposed to identify the applicable federal NSR requirements that will be codified as “applicable requirements” in federal operating permits required by Chapter 122. Interested persons may submit comments on the consistency of the proposed rules with the CMP goals and policies during the public comment period.

STATE IMPLEMENTATION PLAN REVISION. The proposed amendments to Chapter 116 are a part of the proposed SIP revision which, upon approval by EPA, would remove Chapters 116 and 106 from the SIP. In addition, the commission is proposing new Chapter 126 under concurrent rulemaking, which will be submitted to EPA for inclusion in the SIP in place of Chapter 116 and Chapter 106.

PUBLIC HEARING. A public hearing on the proposal will be held September 11, 1997, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. 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 within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments regarding this proposal may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97130-116-AI. Comments must be received by 5:00 p.m., September 22, 1997. For further information or questions concerning this proposal, contact Mr. Shanon DiSorbo of the Operating Permits Division, Office of Air Quality, (512) 239-1149.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

SUBCHAPTER A : DEFINITIONS

§§116.10, 116.11, 116.14

§116.10. General Definitions.

Unless specifically defined in the [Texas Clean Air Act (TCAA)] or in the rules of the [Texas Natural Resource Conservation Commission (TNRCC or] 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 which are defined by the TCAA, and in §101.1 of this title (relating to Definitions [General Rules]), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Allowable emissions - For the purpose of determining whether there has been a net increase in allowable emissions under §116.116(e) of this title, the authorized rate of emissions of an air contaminant from a facility as determined in accordance with this section. This rate cannot exceed any applicable state or federal emissions limitation.

(A) Permitted facility - For a facility with a preconstruction permit under this chapter, the allowable emissions shall be any emission limit established in the permit on a MAERT and any emission limit contained in representations in the permit application which was relied upon in issuing the permit, plus any allowable emissions authorized by an [a standard] exemption under Chapter 106 of this title (relating to Exemptions from Permitting).

(B) Exempted [Standard exemption] facility - For a facility operating under Chapter 106 of this title [a standard exemption], the allowable emissions shall be the least of the emissions rate allowed in Subchapter A of Chapter 106 of this title (relating to General Requirements) or [§116.211 of this title (relating to Standard Exemption List,) the emissions rate specified in the applicable exemption, or the [a federally enforceable] emissions rate represented in a registration or certification for an exempted facility [established on a PI-8 form].

(C) - (F) (No change.)

[De minimis impact - A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.]

Figure: 30 TAC §116.10 - De minimis impact definition

<u>[AIR CONTAMINANT</u>	<u>ANNUAL</u>	<u>24-HOUR</u>	<u>8-HOUR</u>	<u>3-HOUR</u>	<u>1-HOUR</u>
INHALABLE					
PARTICULATE					
MATTER (PM₁₀)	1.0 µg/m³	5 µg/m³			
SULFUR DIOXIDE	1.0 µg/m³	5 µg/m³		25 µg/m³	
NITROGEN DIOXIDE	1.0 µg/m³				
					2 mg/m³
CARBON MONOXIDE			0.5 mg/m³		

[Emissions unit - Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act.]

[Federally enforceable - All limitations and conditions which are enforceable by the Administrator of the United States Environmental Protection Agency (EPA), including those requirements developed pursuant to Title 40 of the Code of Federal Regulations Parts 60 and 61 (40 Code of Federal Regulations 60 and 61), requirements within any applicable State Implementation Plan (SIP), any permit requirements established pursuant to 40 Code of Federal Regulations §52.21, or under regulations approved pursuant to 40 Code of Federal Regulations Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.]

Modification of existing facility - Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted.

The term does not include:

(A) - (D) (No change.)

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) (No change.)

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted pursuant to the TCAA, §382.057, an air pollution control method that is at least as effective as the BACT that the commission [TNRCC]

required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) (No change.)

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of any air contaminant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only pursuant to Chapter 106 of this title or at which modifications have occurred only pursuant to [standard exemptions]; or

(ii) (No change.)

[**Nonattainment area** - A defined region within the state which is designated by the United States Environmental Protection Agency (EPA) as failing to meet the National Ambient Air Quality Standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of the Federal Clean Air Act, §107(d).]

§116.11. Compliance History Definitions.

Unless specifically defined in the [Texas Clean Air Act (TCAA)] or in the rules of the [Texas Natural Resource Conservation Commission (TNRCC or] 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 which are defined by the TCAA, and in §101.1 of this title (relating to Definitions [General Rules]), the following words and terms, when used in the undesignated head of this chapter regarding Compliance History, shall have the following meanings, unless the context clearly indicates otherwise.

Adjudicated decision - Any conviction, final order, judgement, or decree as follows:

(A) (No change.)

(B) a final order, judgement, or decree of any court or administrative agency, or agreement entered into settlement of any legal or administrative action brought in a court or administrative agency, addressing:

(i) (No change.)

(ii) the terms of any permit or order issued by the commission [board];

or

(C) (No change.)

Compliance proceeding - A notice of violation issued by the commission [Texas Air Control Board (TACB)] or other agency for which the commission [TACB] has recommended formal enforcement action and has notified the applicant of such recommendation.

§116.14. Standard Permit Definitions.

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

Off-plant receptor - For the purposes of Subchapter E [F] of this chapter only, off-plant receptor shall be defined as any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or owner of the property upon which the facilities are located.

Oil and gas facility - For the purposes of Subchapter E [F] of this chapter (relating to Standard Permits) only, oil and gas facilities shall be defined as facilities which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth's surface. These oil and gas facilities include, but are not limited to: oil or gas production facilities; water injection facilities; carbon dioxide separation facilities; or oil or gas pipeline facilities consisting of one or more tanks, separators, dehydration units, free water

knockouts, gunbarrels, heater treaters, vapor recovery units, flares, pumps, internal combustion engines, gas turbines, compressors, natural gas liquid recovery units, or gas sweetening and other gas conditioning facilities. This definition does not include sulfur recovery units.

Sulfur recovery unit - For the purposes of Subchapter E [F] of this chapter only, sulfur recovery unit shall be defined as a process device whose primary purpose is to recover elemental sulfur from acid gas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PERMIT APPLICATION

§§116.109-116.112, 116.114-116.118

The new section is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017 and §382.051, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed new section implements Texas Health and Safety Code, §382.017, concerning Rules.

§116.109. Purpose and Scope.

This chapter sets forth the state-only requirements for the construction of any new facility or the modification of any existing facility which may emit air contaminants into the air of this state. In addition to the state-only requirements in this chapter, a person constructing a new facility or engaging in the modification of any existing facility must comply with the applicable requirements in Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution). Where appropriate as determined by the executive director, a single permit document may be issued specifying both the terms and conditions for the construction and operation of the new or modified facility under both this chapter and Chapter 126 of this title.

§116.110. Applicability.

(a) Permit to construct. Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall obtain a permit pursuant to §116.111 of this title (relating to General Applications), satisfy the conditions for a standard permit pursuant to the requirements in Subchapter E [F] of this chapter (relating to Standard Permits), or Subchapter K of Chapter 321 of this title (relating to Concentrated Animal Feeding Operations) or Chapter 332 of this title (relating to Composting) or Subchapter N of Chapter 330 of this title (relating to Landfill Mining), or satisfy the conditions for a flexible permit pursuant to the requirements in Subchapter F [G] of this chapter (relating to Flexible Permits), or satisfy the conditions of Chapter 106 of this title (relating to Exemptions from Permitting) [for exempt facilities pursuant to Subchapter C of this chapter (relating to Permit Exemptions)] before any actual work is begun on the facility. Modifications to existing permitted facilities may be handled through the amendment of an existing permit or an existing flexible permit.

[(b) Operations certification.

[(1) To ensure that operations addressed in the applicant's permit are in conformance with the representations in the permit application, any person who has applied for and received a permit from the Texas Air Control Board (TACB) shall:

[(A) submit the first part of the operations certification before commencing operations certifying that, to the best of the knowledge of an individual with process knowledge in a managerial capacity signing the certification, the facilities or changes authorized by the permit have been accomplished as represented, if those representations affect emissions, method of control, or character of emissions;

[(B) submit a second certification certifying that, to the best of the knowledge of an individual with process knowledge in a managerial capacity signing the certification, the facility complies with all terms of the pre-construction permit and that operations of the facility are in compliance with the Texas Clean Air Act and the rules of the TACB. This certification shall be submitted simultaneously with any report of testing or monitoring results required by the permit or, if no testing or monitoring is required, within 60 days of the commencement of operation. The certification deadline may be extended by the executive director upon a showing of good cause by the permit holder; the request for extension must be filed prior to the certification deadline.

[(2) Multiple operations certifications may be submitted on a facility-by-facility basis for a given permit.

[(3) All permits issued after the effective date of this subsection are subject to the provisions of this subsection.]

(b) [(c)] Change in ownership.

(1) The new owner of a facility which previously has received a permit or special permit from the commission [TNRCC] shall not be required to apply for a new permit or special permit, and the change of ownership shall not be subject to the public notification requirements of this chapter, provided that within 30 days after the change of ownership the new owner notifies the commission [TNRCC] of the change. The notification shall include a certification of each of the following:

(A) the ownership change has occurred and the new owner agrees to be bound by all conditions of the permit or special permit and all representations made in the application for permit or special permit and any amendments to the permit;

(B) there will be no change in the type of pollutants emitted;

(C) there will be no increase in the quantity of pollutants emitted.

(2) The new owner of the facility is required to comply with all conditions of the permit or special permit and all representations made in the application for permit or special permit and any amendments to the permit.

(c) [(d)] Submittal under seal of licensed professional engineer. All applications [for permit or permit amendment] with an estimated capital cost of the project above \$2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a licensed professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas [State] Board of [Registration for] Professional Engineers. For purposes of this subsection, the estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

(d) [(e)] Responsibility for permit application. The owner of the facility or the operator of the facility authorized to act for the owner is responsible for complying with this section.

(e) Potential to emit. Any emission limitation authorized by this chapter shall not be considered federally enforceable. Any owner or operator of a facility wishing to limit the potential to emit or establish a federally enforceable limit shall follow procedures outlined in Subchapter I of Chapter 126 of this title (relating to Potential to Emit Limitations).

§116.111. General Application.

Any application for a new permit, permit amendment, or special permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be

provided before the application is deemed complete. In order to be granted a permit, permit amendment, or special permit amendment, the owner or operator of the proposed facility shall submit information to the commission [Texas Air Control Board (TACB)] which shall demonstrate that all of the following are met.

(1) Protection of public health and welfare. The emissions from the proposed facility will comply with all rules and regulations of the commission [TACB] and with the intent of the [Texas Clean Air Act (TCAA)], including protection of the health and physical property of the people. In considering the issuance of a permit for construction or modification of any facility within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the commission [TACB] 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 these school facilities.

(2) 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 Natural Resource Conservation Commission (TNRCC) "Sampling Procedures Manual" [TACB Compliance Sampling Manual].

(3) (No change.)

(4) [Federal] New Source Performance Standards (NSPS). The emissions from the proposed facility will meet [at least] the requirements of any applicable NSPS as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the [United States Environmental Protection Agency (EPA)] pursuant to authority granted under the [Federal Clean Air Act (FCAA)], §111, as amended. These requirements are enforceable under Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution).

(5) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet [at least] the requirements of any applicable NESHAP, as listed under 40 CFR Parts [Code of Federal Regulations Part] 61 and Maximum Achievable Control Technology standards listed under 40 CFR Part 63, promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended. These requirements are enforceable under Chapter 126 of this title.

(6) (No change.)

(7) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements under Subchapter D of Chapter 126 of this title (relating to Nonattainment Review) [this undesignated head concerning nonattainment review].

(8) Prevention of Significant Deterioration (PSD) review. If the proposed facility is located in an attainment area, it shall comply with all applicable requirements under Subchapter E of Chapter 126 of this title (relating to Prevention of Significant Deterioration Review) [this undesignated head concerning PSD].

(9) Air dispersion modeling. Computerized air dispersion modeling may be required by the TNRCC New Source Review Permits Division [TACB Permits Program] to determine the air quality impacts from a proposed new facility or source modification.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the proposed new or reconstructed facility is a major source for hazardous air pollutants, it shall comply with all applicable requirements under Subchapter K of Chapter 126 of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))).

§116.112. Distance Limitations.

(a) Lead smelters. Pursuant to the TCAA [Texas Clean Air Act], §382.053, a permit shall not be issued for a new lead smelting plant at a site located within 3,000 feet of the residence of any individual and at which lead smelting operations have not been conducted before August 31, 1987. This subsection does not apply to a modification of a lead smelting plant in operation on or before

August 31, 1987, to a new lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead per hour, or to a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations.

(b) Hazardous waste permits. Permits for hazardous waste management facilities shall not be issued if the facility is to be located in the vicinity of specified public access areas under the following circumstances.

(1) - (4) (No change.)

(5) The measurement of distances required by paragraphs (1) - (4) of this subsection shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the permit application is filed with the commission [Texas Natural Resource Conservation Commission]. The restrictions imposed by paragraphs (1) - (4) of this subsection do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(6) (No change.)

§116.114. Application Review Schedule.

(a) Review schedule.

The permit application will be reviewed by the commission [Texas Air Control Board] in accordance with the following schedule.

(1) - (3) (No change.)

(b) (No change.)

§116.115. General and Special Conditions.

(a) Permits, special permits, standard permits, and exemptions may contain general and special conditions. The holders of permits, special permits, standard permits, and exemptions shall comply with any and all such conditions. Upon a specific finding by the executive director that an increase of a particular pollutant could result in a significant impact on the air environment, or could cause the facility to become subject to review under Subchapters D or E or K of Chapter 126 of this title (relating to Nonattainment Review; Prevention of Significant Deterioration Review; Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))) [the undesignated headings of this subchapter relating to Nonattainment Review or Prevention of Significant Deterioration

Review], the permit may include a special condition which states that the permittee must obtain written approval from the executive director before constructing a source under Chapter 106 of this title (relating to Exemptions from Permitting) [a standard exemption] or standard permit.

(b) Holders of permits issued or amended prior to August 16, 1994, shall comply with the general conditions attached to the permit. For permits issued or amended after August 16, 1994, the following general conditions shall be applicable, but may not be specifically stated within the permit document.

(1) (No change.)

(2) Construction progress. Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office of the [Texas Natural Resource Conservation Commission (TNRCC or] commission[)] not later than 15 working days after occurrence of the event.

(3) Start-up notification. The appropriate [Air Program] regional office of the commission shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission [TNRCC] may be present. Phased construction, which may involve a series of units commencing operations at different times, shall provide separate notification for the commencement of operations for each unit.

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

(5) (No change.)

(6) Recordkeeping. A copy of the permit along with information and data sufficient to demonstrate compliance with the permit shall be maintained in a file at the plant site and made available at the request of personnel from the commission [TNRCC] or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the permit holder in the permit application. This information shall include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in special conditions attached to the permit. Information in the file shall be retained for at least two years following the date that the information or data is obtained.

(7) (No change.)

(8) Maintenance of emission control. The facilities covered by the permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements and Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements [Notification Requirements for Major Upset and Notification Requirements for Maintenance]).

(9) Compliance with rules. Acceptance of a permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA [Texas Clean Air Act] and the conditions precedent to the granting of the permit. If more than one state [or federal] rule or regulation or permit condition are applicable, then the most stringent limit or condition shall govern [and be the standard by which compliance shall be demonstrated]. If any federal rule or regulation is applicable, the facility shall also be subject to Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution). Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) (No change.)

§116.116. Changes to Facilities.

(a) (No change.)

(b) Permit amendments. Except as provided in subsection (e) of this section, it shall be unlawful for any person to vary from any representation or permit condition if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless application is made to the executive director to amend the permit or special permit in that regard and such amendment is approved by the executive director or the commission [Texas Natural Resource Conservation Commission (TNRCC)]. Applications to amend a permit or special permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

(c) Permit alterations.

(1) - (2) (No change.)

(3) Permit alterations shall not be subject to the requirements of Best Available Control Technology (BACT) identified in §116.111(3) of this title.

(d) Exemption under Chapter 106 of this title (relating to Exemptions from Permitting)

[Standard exemption] in lieu of permit amendment or alteration. Notwithstanding subsections (b) or (c) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for an exemption under Chapter 106 of this title [Subchapter C of this chapter (relating to Permit Exemptions)] unless prohibited by permit condition as provided in §116.115 of this title (relating to Special Conditions). All such exempted changes to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(e) Changes to qualified facilities. Notwithstanding any other subsection of this section, a physical or operational change may be made to a qualified facility if the change does not result in a net increase in allowable emissions of any air contaminant and does not result in the emission of any air contaminant not previously emitted.

(1) In determining whether a change to a qualified facility results in a net increase in allowable emissions or the emission of any air contaminant not previously emitted, the effect on emissions of the following shall be considered:

(A) (No change.)

(B) any decreases in allowable emissions from other qualified facilities at the same Texas Natural Resource Conservation Commission (TNRCC) air quality account number that

have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(C) (No change.)

(2) The determination of whether a physical or operational change would result in a net increase in allowable emissions of any air contaminant or the emission of any air contaminant not previously emitted shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical or operational change would result in emissions of an air contaminant category or compound above the allowable emissions for that air contaminant category or compound, the amount above the allowable emissions must be offset by an equivalent decrease in emissions at the same facility or a different facility. In making this offset, the following subparagraphs apply.

(A) - (D) (No change.)

(E) The effects screening level shall be determined by the executive director [of the TNRCC].

(F) (No change.)

(3) - (4) (No change.)

(5) If additional air pollution control methods are implemented for the purpose of making a facility a qualified facility, such additional control methods shall be at least as effective as [Best Available Control Technology (BACT)] required at the time the additional control methods are implemented. If additional control methods are implemented that are not at least as effective as such BACT, the facility may be determined to be a qualified facility only if the owner or operator can demonstrate that the control methods were implemented to comply with a law, rule, order, permit, or can demonstrate that the control method was implemented to resolve a documented citizen complaint. The implementation of any additional control methods shall be subject to the requirements of this chapter.

(6) - (7) No change.)

§116.117. Documentation and Notification of Changes to Qualified Facilities.

(a) Persons making physical or operational changes to qualified facilities under the provisions of §116.116(e) of this title (relating to Changes to Facilities) shall maintain documentation at the plant site demonstrating that the changes satisfy the requirements of that section. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain this documentation. This documentation shall include quantification of all emission increases and decreases associated with the

physical or operational change, a description of the physical or operational change, a description of any equipment being installed, and sufficient information as may be necessary to demonstrate that the project is not subject to Subchapters D or E or K of Chapter 126 of this title (relating to Nonattainment Review; Prevention of Significant Deterioration Review; Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))) [will comply with the Federal Clean Air Act, Title 1, Parts C and D]. This documentation shall be made available to representatives of the commission [Texas Natural Resource Conservation Commission (TNRCC)] upon request.

(b) In addition to the documentation requirements under subsection (a) of this section, persons making such changes to qualified facilities shall comply with the following notification requirements.

(1) Annual report. For changes to qualified facilities for which there is no intraplant trading in accordance with §116.116(e)(1) of this title, an annual report shall be submitted to the appropriate Texas Natural Resource Conservation Commission (TNRCC) regional office by August 1 of each year which shall include all changes made under §116.116(e) during the immediately preceding annual period July 1 - June 30. Changes for which notification has been previously submitted by PI-E form to the commission [TNRCC] under paragraphs (2) or (3) of this subsection or which have been incorporated into the permit for the facility need not be included in the annual report. The annual report shall contain a PI-E form for each change. The annual reporting period for a TNRCC air quality account and the due date of the annual report may be changed with the agreement of the TNRCC regional office.

(2) Post-change notification. For changes to qualified facilities for which there is intraplant trading below the reportable limit, notification of the change shall be submitted on a PI-E form to the TNRCC New Source Review Permits Division [of the TNRCC] within 30 days after the change occurs.

(3) Pre-change notification. For changes to qualified facilities for which there is intraplant trading above the reportable limit, notification of the change shall be submitted on a PI-E form to the TNRCC New Source Review Permits Division [of the TNRCC] before the change may occur. The change may occur after the receipt of written notification from the commission [TNRCC] that there are no objections, or 45 days after the notification is received by the commission [TNRCC], whichever occurs first.

(4) (No change.)

(c) (No change.)

(d) If a physical or operational change at a qualified facility will affect compliance with a permit special condition, notice shall be made to the commission [TNRCC] prior to the change. The notice shall identify the affected special condition and indicate the change needed or the desire to remove the special condition from the permit. The permit holder is relieved from complying with the

permit special condition upon the filing of the notice provided the change complies with §116.116(e) of this title.

(e) (No change.)

§116.118. Pre-change Qualification.

(a) If either of the following conditions exists, it will be necessary to establish that a facility is a qualified facility before a physical or operational change may be made under the notification procedure of §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities):

(1) the facility is a qualified facility on the basis of Best Available Control Technology and the requirement for the facility type has not been previously established by the executive director [of the TNRCC]; or

(2) (No change.)

(b) The pre-change qualification shall be made by submitting a PI-E form to the TNRCC New Source Review Permits Division. The facility shall be qualified in accordance with the information contained in the PI-E form after receipt of written notification from the commission [TNRCC] that

there are no objections, or 45 days after the PI-E form is received by the commission [TNRCC], whichever occurs first. The pre-change qualification may be submitted at the same time as a pre-change notification under §116.117(b) of this title or at any other time prior to making a change to a qualified facility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

COMPLIANCE HISTORY

§§116.120-116.126

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017 and §382.051, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules.

§116.120. Applicability.

(a) Except as provided in §116.121 of this title (relating to Exemptions) as part of its construction permit review, or the review of an amendment, or renewal of an existing permit, the commission [Texas Air Control Board (TACB)] shall compile the following information:

(1) (No change.)

(2) for a new facility at a new site, compliance history on similar facilities, if any, owned or operated by the applicant in Texas. The commission [TACB] may require the applicant to indicate which facilities the applicant considers to be similar.

(b) For a facility at a new site if the applicant does not own or operate a similar facility in Texas, the applicant shall provide the commission [TACB] with a compliance history for similar facilities owned or operated by the applicant in other states.

§116.121. Exemptions.

The commission [Texas Air Control Board] shall not be required to compile a compliance history where the total increased actual emissions of any specific contaminant (specific substance, e.g., benzene, arsenic, etc.) from the facility or site will be accompanied by greater than a 1.1 to 1 reduction of the same specific air contaminant (specific substance, e.g., benzene, arsenic, etc.) from the facility or site.

§116.122. Contents of Compliance History.

(a) (No change.)

(b) If the applicant has no compliance history in the United States, then the applicant shall provide the commission [Texas Air Control Board (TACB)] with a compliance history for any similar facilities owned or operated by:

(1) - (4) (No change.)

(c) The compliance history shall include the following compliance events and associated information:

(1) for Texas facilities:

(A) criminal convictions known to the commission [TACB] and civil orders, judgments, and decrees identified by stating:

(i) - (iv) (No change.)

(B) - (C) (No change.)

(2) for United States facilities outside Texas:

(A) - (B) (No change.)

(C) for notices of violation issued by the [United States Environmental Protection Agency (EPA)]:

(i) - (iii) (No change.)

(d) In compiling the applicant's compliance history pursuant to subsection (c) of this section, the commission [TACB] shall not include violations of fugitive emission monitoring and recordkeeping requirements imposed either by §101.20(1) and (2) of this title (relating to Compliance with EPA Standards), or state implementation plan requirements applicable to major sources in nonattainment areas where:

(1) violations occurring after the effective date of this rule have been the subject of a commission [TACB] administrative enforcement action and the commission [board] classified those violations as not being subject to compliance history review; or

(2) violations occurring during five years preceding the effective date of this rule that have been the subject of commission [TACB] administrative enforcement action in which:

(A) the commission [TACB] did not classify those violations as either major seriousness or major impact for the purpose of administrative review; and

(B) the commission [board] assessed a total administrative penalty of less than \$20,000 for any of those violations.

(e) The commission [TACB] may request an analysis of the significance of any of the compliance events identified in the compliance history and their relevance to the facility that is the

subject of the application. The commission [TACB] request shall list specific compliance events requiring such an analysis.

§116.123. Effective Dates.

The requirements under this undesignated head (concerning Compliance History) apply only to applications filed on or after December 9, 1992. For applications filed before June 1, 1993, neither the commission [Texas Air Control Board (TACB)] nor the applicant is required to include compliance events occurring before June 1, 1988. For applications filed on or after June 1, 1993, neither the commission [TACB] nor the applicant is required to include compliance events occurring more than five years prior to the date on which the application is filed.

§116.124. Public Notice of Compliance History.

When public notice is required pursuant to §116.131 of this title (relating to Public Notification Requirements), the applicant shall include the following statement in the notice: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Natural Resource Conservation Commission [Texas Air Control Board]."

§116.125. Preservation of Existing Rights and Procedures.

Nothing in this subchapter (concerning New Source Review Permits Compliance History) shall diminish the rights of any party in a contested case hearing to raise any issue authorized by [the] Texas Health and Safety Code, §382.0518(c), nor diminish the rights of any person to request and obtain compliance history information from the commission [Texas Air Control Board]. Nothing in this subchapter shall limit the authority of the commission [board] to request and consider any other information that is relevant to the application under the law. Nothing in this subchapter shall create any right in third parties which did not exist before the effective date of this subchapter.

§116.126. Voidance of Permit Applications.

If an applicant does not submit compliance history information within 180 days, upon written request, the commission [Texas Air Control Board (TACB)] will void the permit application. The applicant will also forfeit the fees associated with the permit application. A new permit application shall be required for further consideration by the commission [TACB].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS
PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§§116.130-116.134, 116.136, 116.137

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.130. Applicability.

(a) Any person who applies for a new permit shall be required to publish notice of intent to construct a new facility or modify an existing facility in a newspaper in general circulation in the municipality where the facility is located. Any person who applies for a permit amendment shall provide public notification as required by the executive director. Where appropriate, as determined by the executive director, a single public notice may be published that meets the public notice requirements of both this subchapter and Subchapter C of Chapter 126 of this title (relating to Public Notification and Comment) for the construction and operation of a new or modified facility.

(b) Upon written request by the owner or operator of a facility which previously has received a permit or special permit from the commission [Texas Air Control Board], the executive director, or designated representative may exempt the relocation of such facility from the requirements of this section if there is no indication that 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.

§116.131. Public Notification Requirements.

(a) Notification by applicant. [If the application is complete, for any permit subject to the Federal Clean Air Act (FCAA), Title I, Part C or D, or to Title 40 Code of Federal Regulations (CFR), Part 51.165(b), the executive director shall state a preliminary determination to issue or deny the permit and require the applicant to conduct public notice of the proposed construction. If an application is received for a permit not subject to the FCAA, Part C or D, or to 40 CFR 51.165(b), the executive director shall require the applicant to conduct public notice of the proposed construction. In all cases, public] Public notice required by §116.130 of this title (relating to Applicability) shall include the information specified in §116.132 of this title (relating to Public Notice Format) and the applicant shall provide such notice using each of the methods specified in §116.132 of this title. [The executive director may specify that additional information needed to satisfy public notice requirements of 40 CFR §52.21 also be included in the notice published pursuant to §116.132 of this title.]

(b) Availability of application for review. The executive director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the commission's [Texas Air Control Board (TACB)] Austin office and at the appropriate Texas Natural Resource Conservation Commission [TACB] regional office in the region where construction is proposed throughout the comment period established in the notice published pursuant to §116.132 of this title [(relating to Public Notice Format)].

§116.132. Public Notice Format.

(a) Publication in public notices section of newspaper. At the applicant's expense, notice of intent to obtain a permit to construct a facility, modify an existing facility, or to seek permit renewal review shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:

(1) - (5) (No change.)

[(6) preliminary determination of the executive director to issue or not issue the permit (for permits subject to the Federal Clean Air Act, Title I, Part C or D, or to 40 CFR 51.165(b));]

(6) [(7)] location and availability of copies of the completed permit application and the executive director's [Texas Air Control Board's (TACB's)] preliminary analyses;

(7) [(8)] public comment period;

(8) [(9)] procedure for submission of public comments concerning the proposed construction;

(9) [(10)] notification that a person who may be affected by emission of air contaminants from the facility is entitled to request a hearing in accordance with commission [TACB] rules; and

(10) [(11)] name, address, and phone number of the appropriate commission [regional TACB] office to be contacted for further information.

(b) - (d) (No change.)

§116.133. Sign Posting Requirements.

(a) At the applicant's expense, a sign or signs shall be placed at the site of the proposed facility declaring the filing of an application for a permit and stating the manner in which the commission

[Texas Air Control Board (TACB)] may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:

(1) - (4) (No change.)

(5) signs shall include the words "Texas Natural Resource Conservation Commission" ["Texas Air Control Board"], and the address of the appropriate TNRCC [TACB] regional office in no less than one-inch bold-face capital lettering and 3/4-inch bold-face lower case lettering; and

(6) signs shall include the phone number of the appropriate commission [TACB regional] office in no less than two-inch bold-face numbers.

(b) (No change.)

(c) Each sign placed at the site must be located within 10 feet of each (every) property line paralleling a street or other public thoroughfare. Signs must be visible from the street and spaced at not more than 1,500 foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare. The commission [TACB] may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public.

(d) The commission [TACB] may approve variations from the requirements of subsection (c) of this section if the applicant has demonstrated that it is not practical to comply with the specific requirements of subsection (c) of this section and alternative sign posting plans proposed by the applicant area at least as effective in providing notice to the public. The approval from the commission [TACB] under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) - (g) (No change.)

§116.134. Notification of Affected Agencies.

When newspaper notices are published in accordance with §116.132 of this title (relating to Public Notice Format), the permit applicant shall furnish a copy of such notices and date of publication to the commission [Texas Air Control Board (TACB)] in Austin; the EPA [United States Environmental Protection Agency] regional administrator in Dallas; all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; and the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility. Along with such notices furnished to the commission [TACB], the permit applicant shall certify that the signs required by §116.133 of this title (relating to Sign Posting Requirements) have been posted in accordance with the provision of that section.

§116.136. Public Comment Procedures.

(a) Comment period. Interested persons may submit written comments, including requests for public hearings pursuant to the TCAA [Texas Clean Air Act], §382.056, on the permit application and on the executive director's preliminary analysis [decision to issue or not to issue the permit]. The public comment and timely hearing requests shall be processed under Chapter 55, Subchapter B of this title (relating to Hearing Requests, Public Comment).

(b) (No change.)

§116.137. Notification of Final Action by the Texas Natural Resource Conservation Commission [Texas Air Control Board].

(a) Notification of applicant. Within 180 days of receipt of a completed application, the Executive director shall notify the permit applicant of the final decision to grant or deny the permit, provided:

- (1) no requests for public hearing or public meeting on the proposed facility have been received; and
- (2) the applicant has satisfied all public notification requirements of this section. [;
and]

[(3) the federal regulations for Prevention of Significant Deterioration of Air Quality and nonattainment review do not apply.]

(b) Combined notice. When the executive director authorizes a combined public notice under §116.130(a) of this title (relating to Applicability), the requirements of subsection (a) of this section do not apply.

(c) [(b)] Notification of commenters. Persons submitting written comments in accordance with §116.136(a) of this title (relating to Public Comment Procedures) or persons submitting a written request to be notified of the final agency action within the comment period specified in §116.136(a) of this title will be notified of the executive director's final decision at the same time that the applicant is notified.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PERMIT FEES

§§116.140, 116.141, 116.143

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.140. Applicability.

Any person who applies for a permit to construct a new facility or to modify an existing facility, or for an amendment to an existing permit pursuant to §116.110 of this title (relating to Applicability) shall remit, at the time of application for such permit, a fee based on the estimated capital cost of the project. The fee will be determined as set forth in §116.141 of this title (relating to Determination of Fees). Fees will not be charged for [operating permits,] permit alterations, amendments to special permits, [standard exemptions,]site approvals for permitted portable facilities, changes of ownership, or changes of location of permitted facilities.

§116.141. Determination of Fees.

(a) (No change.)

(b) The following fee schedule may be used by a permit applicant to determine the fee to be remitted with a permit application.

(1) If the estimated capital cost of the project is less than \$300,000 or if the project consists of new facilities controlled and operated directly by the federal government and the requirements of Subchapter E of Chapter 126 of this title (relating to Prevention of Significant Deterioration Review) [for which an application is submitted after January 1, 1987, and the federal regulations for Prevention of Significant Deterioration (PSD) Review] do not apply, the fee is \$450. The provisions of subsections (c) and (d) of this section do not apply to a project consisting of new facilities controlled and operated directly by the federal government.

(2) If the estimated capital cost of the project is \$300,000 or more and the requirements of Subchapter E of Chapter 126 of this title [PSD regulations] do not apply, the fee is 0.15% of the estimated capital cost of the project. The maximum fee is \$75,000. [For determination of fees for projects applicable to PSD regulations, see §116.163 of this title (relating to Prevention of Significant Deterioration Permit Fees).]

(c) - (e) (No change.)

(f) Whenever a permit application and fee are submitted under Subchapter E of Chapter 126 of this title, the applicant shall be exempt from any fees required in §116.140 of this title (relating to Applicability) for the same project.

§116.143. Payment of Fees.

All permit fees will be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) [Texas Air Control Board (TACB)] and delivered with the application for permit or amendment to the TNRCC, P.O. Box 13088, MC 214, Austin, Texas 78711-3088 [12124 Park 35 Circle, Austin, Texas 78753]. Required fees must be received before the agency will begin examination of the application.

(1) (No change.)

(2) Return of fees. Fees must be paid at the time an application for a permit or amendment is submitted. If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded except that the entire fee will be refunded for any such application for which an [a standard] exemption under Chapter 106 of this title (relating to Exemptions from Permitting) is allowed. No fees will be refunded

after a deficient application has been voided or after a permit or amendment has been issued by the agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER C : PERMIT RENEWALS

§§116.310-116.314

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.310. Notification of Permit Holder.

The commission [Texas Natural Resource Conservation Commission (TNRCC)] shall provide written notice to the holder of a permit that the permit is scheduled for review. Such notice will be provided by certified or registered United States mail no less than 180 days prior to the expiration of the permit. The notice shall specify the procedure for filing an application for review and the information to be included in the application. The application shall be completed by the holder of the permit and returned to the commission [TNRCC] no later than 90 days before expiration of the permit. Pursuant to Texas Civil Statutes, Article 9027, the commission [TNRCC] shall exempt a holder of a permit from any increased fee or other penalty for failure to renew the permit if the individual establishes, to the satisfaction of the commission [TNRCC], that the failure to renew in a timely manner

occurred because the individual was on active duty in the United States Armed Forces serving outside the State of Texas.

§116.311. Permit Renewal Application.

(a) In order to be granted a permit renewal, the owner or operator of the facility shall submit information in support of the application which demonstrates that:

(1) (No change.)

(2) the facility meets [at least] the requirements of any applicable New Source Performance Standards promulgated by the [United States Environmental Protection Agency (EPA)] under the authority of the [Federal Clean Air Act (FCAA)], §111, as amended; and

(3) the facility meets [at least] the requirements of any applicable emission standard for hazardous air pollutants promulgated by EPA under the authority of the FCAA, §112, as amended.

The requirements for paragraphs (2) and (3) of this subsection are enforceable under Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution).

(b) In addition to the requirements in subsection (a) of this section, if the commission [TNRCC] determines it necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements, then:

(1) (No change.)

(2) the commission [TNRCC] shall impose as a condition for renewal only those requirements the executive director determines to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area.

(c) The commission [TNRCC] shall review the compliance history of the facility in consideration of granting a permit renewal. The compliance history review shall be conducted in accordance with §§116.120-116.126 of this title (relating to Compliance History). In order for the permit to be renewed, the application shall include information demonstrating that the facility is or has been in substantial compliance with the provisions of the TCAA and the terms of the existing permit. If the facility has a history which demonstrates failure to maintain substantial compliance with the provisions of the TCAA or the terms of the existing permit, the renewal shall not be granted. If it is found that violations in the compliance history constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including failure to make a timely and substantial attempt to correct the violations, the renewal shall be denied. If a contested case hearing has not been called, then the staff must notify the applicant of the intent to recommend denial and state the

basis of the findings. The applicant will be given an opportunity to respond to the notice. If the findings reflect a pattern of disregard for applicable regulations which do not warrant denial, additional conditions may be placed in the permit.

(d) A permit holder who [that] fails to submit an application for review and renewal within 90 days prior to expiration of the permit, pursuant to §116.310 of this title (relating to Notification of Permit Holder), will cause the subject permit to expire, unless the time period for the submission of the application is extended by the executive director. Permits are subject to the following renewal schedule:

(1) -(3) (No change.)

§116.312. Public Notification and Comment Procedures.

The executive director shall mail a written notification to the permit holder within 30 days of receipt of a completed application for permit review and renewal, as determined by the executive director. The notification will acknowledge receipt of the application and require the applicant to provide public notice of the application for permit renewal according to §116.132 of this title (relating to Public Notice Format) and §116.133 of this title (relating to Sign Posting Requirements). All requirements pertaining to signs and public notification in §116.132 and §116.133 of this title and §116.134 of this title (relating to Notification of Affected Agencies) and to public comments in

§116.136 of this title (relating to Public Comment Procedures), which apply to proposed construction, proposed facilities, and permit applications shall apply likewise to proposed renewals, existing facilities, and renewal applications. The sign heading required under §116.133(a)(2) of this title shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT." When newspaper notices are published in accordance with §116.132 of this title, the applicant for permit renewal shall furnish a copy of such notices and dates of publication to the commission [TNRCC] in Austin and all local air pollution control agencies with jurisdiction in the county in which the facility is located. Along with such notices furnished to the commission [TNRCC], the applicant shall certify that the signs required by §116.133 of this title have been posted in accordance with the provisions of §116.133(a)(2).

§116.313. Renewal Application Fees.

(a) The holder of a permit to be reviewed for renewal by the commission [Texas Natural Resource Conservation Commission (TNRCC)] shall remit a fee with each renewal application, pursuant to the TCAA [Texas Clean Air Act], §382.062(a)(1)(B), based on the total annual allowable emissions from the permitted facility for which the renewal is being sought, as applied to the following table. Figure: 30 TAC §116.313(a)

RENEWAL FEE TABLE*

X = TOTAL ALLOWABLE (TONS/YEAR)	BASE FEE	INCREMENTAL FEE
$X \leq 5$	\$300	--
$5 < X \leq 24$	\$300	\$35/ton
$24 < X \leq 99$	\$965	\$25/ton
$99 < X \leq 994$	\$2,840	\$8/ton
$X > 994$	\$10,000	--

Minimum fee: \$300

Maximum fee: \$10,000

* To calculate the fee, multiply the number of tons in excess of the lower limit of the appropriate category by the incremental fee, then add this amount to the base fee. For example, if total emissions of all air contaminants are 50 tons per year, the total fee would be \$1,615 (base fee of \$965, plus incremental fee of \$25 x 26 tons or \$650).

(b) This fee shall be due and payable at the time application for review and renewal is filed with the commission [TNRCC] in response to written notice from the commission [TNRCC] consistent with §116.310 of this title (relating to Notification of Permit Holder). No fee will be accepted before the permit holder has been notified by the commission [TNRCC] that the permit is scheduled for

review. The basis for fees is the schedule in effect at the time the application is filed. All permit review fees shall be remitted by check or money order payable to the Texas Natural Resource Conservation Commission (TNRCC) and mailed to the TNRCC, P.O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the agency will consider an application to be complete.

(c) No additional renewal fees shall be submitted for concurrent renewal of permits under Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution).

§116.314. Review Schedule.

(a) Renewal of permit. Subsequent to review, the executive director shall renew a permit if it is determined the facility meets the requirements of §116.311 of this title (relating to Permit Renewal Applications) and §116.312 of this title (relating to Public Notification and Comment Procedures). The executive director shall notify the permit holder in writing of the decision regarding renewal. If the permit cannot be renewed, the executive director shall forward, with the notice, a report which describes the basis for the determination. If denial is based on failure to meet the requirements of §116.311(a) or (b) of this title, the executive director's report shall establish a schedule for compliance with the renewal requirements. The report shall be forwarded to the permit holder no later than 180 days after the commission [Texas Natural Resource Conservation Commission (TNRCC)] receives a

completed application. The permit shall be renewed if the requirements are met according to the schedule specified in the report and the executive director shall notify the permit holder in writing of the permit renewal. However, if denial is based on failure to maintain substantial compliance with the provisions of the TCAA [Texas Clean Air Act] or the terms of the existing permit pursuant to §116.311(c) of this title, the renewal denial shall be final, and the executive director shall notify the permit holder in writing of the denial.

(b) Contested case hearing. In the event that the permit holder fails to satisfy the commission's [TNRCC] requirements for corrective action by the deadline specified in the commission [TNRCC] report, the applicant shall be required to show cause in a contested case proceeding why the permit should not expire. The proceeding will be conducted pursuant to the requirements of the APA and Chapters 1, 55, and 80 of this title (relating to Purpose of Rules, General Provisions; Request for Contested Case Hearing; and Contested Case Hearings) [Administrative Procedure Act, Texas Government Code, Chapter 2001].

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER D : EMERGENCY ORDERS

§§116.410-116.413, 116.415-116.419

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.410. Applicability.

The owner or operator of a facility may apply to the executive director for an emergency order to authorize immediate action for the addition, replacement, or repair of facilities or control equipment, and authorizing associated emissions of air contaminants, whenever a catastrophic event necessitates such construction and emissions otherwise precluded under the TCAA [Texas Clean Air Act].

However, if the addition, replacement, or repair of facilities or control equipment is subject to Subchapters D, E, or K of Chapter 126 of this title (relating to Nonattainment Review; Prevention of Significant Deterioration Review; or Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))), the owner or operator shall follow the procedures outlined in Subchapter H of Chapter 126 of this title (relating to Emergency Orders). For purposes of this section,

a catastrophic event is an unforeseen event including, but not limited to, an act of God, an act of war, severe weather conditions, explosions, fire, or other similar occurrences beyond the reasonable control of the operator, which renders a facility or its functionally related appurtenances inoperable.

§116.411. Application for an Emergency Order.

The owner or operator of a facility who applies for an emergency order shall submit a sworn application which contains all of the following:

(1) - (7) (No change.)

(8) an estimate of the date on which the facility will begin operation; [and]

(9) a statement that the proposed construction is not subject to Subchapters D or E or K of Chapter 126 of this title (relating to Nonattainment Review; Prevention of Significant Deterioration Review; and Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))); and

(10) [(9)] any other information or item the executive director may require to support or explain the need for, or to expedite the issuance of, an emergency order; including information

regarding the applicability of and compliance with any federal requirements for new or modified sources.

§116.412. Public Notification.

The commission [Texas Air Control Board (TACB)] shall publish notice of the issuance of an emergency order in the *Texas Register* as soon as practicable after issuance of the order. If the order is issued prior to a hearing, the order shall fix a time and location for a hearing which is to be held as soon as practicable after the order is issued. The commission [TACB] shall publish notice of any hearing in the *Texas Register* not later than the 10th day prior to the date set for the hearing, plus give any other general notice determined by the executive director to be warranted and practicable under the circumstances. Notice of the issuance and notice of the hearing may be consolidated for publication in the *Texas Register*.

§116.413. Public Hearing for an Emergency Order.

A public hearing on the merits and needs of an emergency order shall be held either prior to or following issuance of the order. If the hearing is held prior to issuance of a proposed emergency order, the commission [board] shall affirm the order as proposed, issue a modified order, or deny and set aside the order. If the hearing is held following issuance of an emergency order, the commission [board] shall affirm, modify, or set aside the order as issued. Any hearing on an emergency order shall be

conducted by the commission [board or a hearings examiner of the board] in accordance with provisions of the APA and §10.8 of this title (relating to Evidentiary Hearing Held by Commission) and Chapter 80 of this title (relating to Contested Case Hearings) [Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§103.41-103.65 of this title (relating to Procedural Rules)].

§116.415. Contents of an Emergency Order.

An emergency order issued by the executive director shall contain at least the following:

(1) - (3) (No change.)

(4) a schedule for submission of a complete construction permit application under provisions of the TCAA [Texas Clean Air Act], §382.0518.

§116.416. Requirement to Apply for a Permit or Modification.

The owner or operator of a facility for which an emergency order has been issued shall submit an application within 60 days of issuance of the order pursuant to the [Texas Clean Air Act (TCAA)], §382.063, and in accordance with provisions of the TCAA, §382.0518, and with Subchapter B of this chapter (relating to New Source Review Permits). The application shall be reviewed and acted upon by

the executive director without regard to construction activity authorized by the emergency order. The appropriate permit fee shall be due and payable pursuant to the undesignated head Permit Fees in Subchapter B of this chapter. Costs and expenses related to additions, replacement, or repair of facilities or control equipment shall not be a consideration in any determination in the review of this application.

§116.417. Modification of an Emergency Order.

The commission [board] shall modify a proposed or issued order if the hearing record shows that:

(1) construction and emissions otherwise precluded under the TCAA [Texas Clean Air Act] are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of facilities or control equipment that is necessitated by a catastrophic event;

(2) - (3) (No change.)

§116.418. Setting Aside an Emergency Order.

The commission [board] shall set aside a proposed or issued order if the hearing record does not show, in accordance with §116.414 of this title (relating to Affirmation of an Emergency Order) or §116.417 of this title (relating to Modification of an Emergency Order), that the order should be either affirmed or modified and adopted as modified.

§116.419. Expiration of Emergency Order.

The term of an emergency order issued under this section may not exceed 180 days. An emergency order may be renewed once for a period not to exceed 180 days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER E : STANDARD PERMITS

§§116.610, 116.611, 116.614, 116.615, 116.617, 116.620, 116.621

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.610. Applicability.

(a) Pursuant to the [Texas Clean Air Act (TCAA)], §382.051, a project which meets the requirements for a standard permit listed in this subchapter 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 claim.

(1) any project which results in a net increase in emissions of air contaminants from the project other than carbon dioxide, water, nitrogen, methane, ethane, hydrogen, oxygen, or those for which a National Ambient Air Quality Standard has been established must meet the emission limitations

of §106.261(3) or (4) or §106.262(3) of this title (relating to Facilities (Emission Limitations), and Facilities (Emission and Distance 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) emissions from the proposed facility will meet the requirements of any applicable New Source Performance Standard as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA pursuant to authority granted under the FCAA, §111, as amended. These requirements are enforceable under Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution) [the proposed project must comply with the applicable provisions of the Federal Clean Air Act (FCAA), §111 (regarding Federal New Source Performance Standards) and §112 (regarding Hazardous Air Pollutants)];

(4) emissions from the proposed facility will meet the requirements of any applicable National Emission Standard Hazardous Air Pollutants, as listed under 40 CFR Part 61 and Maximum Achievable Control Technology standards listed under 40 CFR Part 63, promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended. These requirements are enforceable under Chapter 126 of this title.

(5) [(4)] the owner or operator of the facility shall register the proposed project in accordance with §116.611 of this title (relating to Registration Requirements).

(b) Any project, except those authorized under §116.617 of this title (relating to Standard Permits for Pollution Control Projects), which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration Review) or Part D (Nonattainment Review) and regulations promulgated thereunder is subject to the requirements of §126.110 [§116.110] of this title (relating to Applicability) rather than this subchapter.

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

(d) If the proposed new or reconstructed facility is a major source of hazardous air pollutants, it shall comply with all applicable requirements under Subchapter K of Chapter 126 of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))).

§116.611. Registration Requirements.

(a) Registration for a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the commission's [Texas Natural Resource Conservation Commission (commission)] Office of Air Quality, the appropriate commission Regional Office, and any local air pollution program with jurisdiction, before a standard permit can be claimed. The registration must be submitted on a Form PI-1S and must document compliance with the requirements of this section, including, but not limited to:

(1) - (6) (No change.)

(b) (No change.)

(c) [Any person claiming a standard permit may certify and register a federally enforceable emission limitation for one or more air contaminants by stating a maximum allowable emission rate in the registration. The certification may be amended 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.] A copy of the [The certified] registration, along with any correspondence related to the registration, shall be maintained on-site and be provided upon request to a representative of the executive director or any air pollution control agency having jurisdiction. For facilities that normally operate unattended, this

information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration.

§116.614. Standard Permit Fees.

Any person who claims a standard permit shall remit, at the time of registration, a flat fee of \$450 for each standard permit claimed. All standard permit fees will be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the permit registration to the TNRCC, P.O. Box 13088, MC 214, Austin, Texas 78711-3088 [P.O. Box 13087, Austin, Texas 78753]. No fees will be refunded.

§116.615. General Conditions.

The following general conditions are applicable to holders of standard permits, but will not necessarily be specifically stated within the standard permit document.

(1) Protection of public health and welfare. The emissions from the facility must comply with all applicable rules and regulations of the [Texas Natural Resource Conservation Commission ([commission])] adopted under the Texas Health and Safety Code, Chapter 382, and with intent of the [Texas Clean Air Act ([TCAA])], including protection of health and property of the public.

(2) - (7) (No change.)

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, EPA [United States Environmental Protection Agency], or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.

(9) Maintenance of emission control. The facilities covered by the standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Record Keeping Requirements and Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements [Notification Requirements for Major Upset and Notification Requirements for Maintenance]).

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the claiming of the standard permit. If more than one state [or federal] rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern [governs]. If any federal rule or regulation is applicable, the facility shall also be subject to Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution). Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

§116.617. Standard Permits for Pollution Control Projects.

This standard permit applies to the installation of emissions control equipment or implementation of control techniques as required by any governmental standard, or undertaken voluntarily, or to replace existing emission control equipment or control techniques. This standard permit also authorizes the substitution of compounds used in manufacturing processes for the purpose of complying with governmental standards or to reduce emission effects.

(1) - (7) (No change.)

(8) If the project, without consideration of any other increases or decreases not related to the project, will result in a significant net increase in emissions of any criteria pollutant, a person claiming this standard permit shall submit, with the registration, information sufficient to demonstrate that the increase will meet the conditions of subparagraph (A) of this paragraph.

(A) (No change.)

(B) For purposes of this section, "significant net increase" means those emissions increases resulting solely from the installation of control equipment or implementation of control techniques that are equal to or greater than:

(i) the major modification threshold listed in §126.10 [§116.12] of this title (relating to Nonattainment Review Definitions), Table I, for pollutants for which the area is designated as nonattainment, or for precursors to these pollutants; or

(ii) significant as defined in Title 40 CFR §52.21(b)(23) (effective July 20, 1993) for pollutants for which the area is designated attainment or unclassifiable, or for precursors to these pollutants.

(C) Netting is not required when determining whether this demonstration must be made for the proposed project. The increases and decreases in emissions resulting from the project

must be included in any future netting calculation if they are determined to be otherwise creditable under PSD and nonattainment new source review provisions of the [Federal Clean Air Act (FCAA)], Parts C and D and regulations promulgated thereunder.

(9) For purposes of compliance with the PSD and nonattainment new source review provisions of the FCAA, Parts C and D and regulations promulgated thereunder, any increase that is less than significant, or satisfies the requirements of paragraph (8) of this section does not constitute a physical change or a change in the method of operation. For purposes of compliance with the Standards of Performance for New Stationary Sources regulations promulgated by the EPA [United States Environmental Protection Agency] at 40 CFR §60.14 (effective December 16, 1975), an increase that satisfies the requirements of paragraph (8) of this section also satisfies the requirements of 40 CFR §60.14(e)(5).

§116.620. Installation and/or Modification of Oil and Gas Facilities.

(a) Emission specifications.

(1) - (3) (No change.)

(4) New or modified internal combustion reciprocating engines or gas turbines permitted under this standard permit shall satisfy all of the requirements of §106.512 of this title

(relating to Stationary Engines and Turbines) [Standard Exemption Number 6], except that registration using the Form PI-7 [or PI-8] shall not be required. Emissions from engines or turbines shall be limited to the amounts found in §106.4 (a) (1) of this title (relating to Requirements for Exemption from Permitting) [§116.211(a)(1) of this title (relating to Standard Exemption List)].

(5) - (12) (No change.)

(13) Appropriate documentation shall be submitted to demonstrate that the facility is not subject to Subchapters D or E or K of Chapter 126 of this title (relating to Nonattainment Review; Prevention of Significant Deterioration Review; and Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))). Any facility subject to Subchapters D, E, or K of Chapter 126 of this title shall not be entitled to this standard permit [compliance with the Prevention of Significant Deterioration (PSD) and nonattainment new source review provisions of the Federal Clean Air Act, Parts C and D, and regulations promulgated thereunder, are being met. The oil and gas facility shall be required to meet the requirements of Subchapter B of this chapter (relating to New Source Review Permits) instead of this subchapter if a PSD or nonattainment permit is required].

(14) - (16) (No change.)

(b) Control requirements.

(1) Floating roofs or equivalent controls shall be required on all new or modified storage tanks, other than pressurized tanks which meet §106.476 of this title (relating to Pressurized Tanks or Tanks Vented to Controls) [Standard Exemption 83], unless the tank is less than 25,000 gallons in nominal size or the vapor pressure of the compound to be stored in the tank is less than 0.5 pounds per square inch absolute (psia) at maximum short-term storage temperature.

(A) - (E) (No change.)

(2) (No change.)

(c) Inspection requirements.

(1) Owners or operators who are subject to subsection (a)(7) or (8) of this section shall comply with the following requirements.

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is detected to exceed a VOC concentration greater than 10,000 parts per million by volume (ppmv) above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound for all components. The VOC fugitive emission

components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.5 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 pounds per square inch (psi) (five kilopascals (Kpa)) below ambient pressure, then these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by the agency representatives, the [United States Environmental Protection Agency (EPA)], or any other air pollution agency having jurisdiction. All piping and valves two inches nominal size and smaller, unless subject to federal NSPS requiring a fugitive VOC emissions leak detection and repair program or Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds), are also exempt from this requirement.

(B) - (I) (No change.)

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Air Quality, New Source Review Permits Division that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) - (ii) (No change.)

(2) Owners or operators who are subject to subsection (a)(9) or (10) of this section shall comply with the following requirements.

(A) - (I) (No change.)

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Air Quality, New Source Review Permits Division that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i) - (ii) (No change.)

(K) (No change.)

(3) (No change.)

(d) (No change.)

(e) Monitoring and recordkeeping requirements.

(1) (No change.)

(2) The results of the VOC leak detection and repair requirements shall be made available to the executive director [, his or her designated representative,] or any air pollution control agency having jurisdiction upon request. Records, for all components, shall include:

(A) - (E) (No change.)

(3) - (8) (No change.)

§116.621. Municipal Solid Waste Landfills.

A person may claim a standard permit for the construction or modification to a municipal solid waste landfill (MSWLF) or municipal solid waste facility (MSW facility) as defined in §101.1 of this title (relating to Definitions), including, but not limited to, Type I, Type 1-AE, Type II, Type III, Type IV, Type IV-AE, Type VI, and Type IX sites as defined in §330.41 of this title (relating to Types of Municipal Solid Waste Sites).

(1) (No change.)

(2) Separate permit authorization under Subchapter B of this chapter (relating to New Source Review Permits) must be obtained for the following:

(A) - (E) (No change.)

(F) any project which constitutes a new major source, or major modification under the new source review requirements of the FCAA [Federal Clean Air Act], Part C (Prevention of Significant Deterioration review),₂ [or] Part D (nonattainment review),₂ or §112(g) review and regulations promulgated thereunder shall be subject to the requirements of §126.110 [§116.110] of this title (relating to Applicability) rather than this standard permit [subchapter].

(3) (No change.)

(4) The permit holder shall comply with the air emissions standards as specified in 40 CFR Part 60, Subpart WWW, with the following additions and changes.

(A) (No change.)

(B) The GCCS shall be designed to control nonmethane organic compounds (NMOC) gas emissions in one or more of the following ways by routing the total collected gas to:

(i) an open flare with a minimum height of 30 feet and which satisfies all of the requirements of Subchapter A of Chapter 106 of this title (relating to General Requirements) and §106.492 of this title (relating to Flares) [§116.211 of this title (relating to Standard Exemption List), Standard Exemption Number 80], except that registration using Form P1-7 [or P1-8] shall not be required;

(ii) - (iii) (No change.)

(iv) gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that satisfy all of the requirements of Subchapter A of Chapter 106 of this title and §106.512 of this title (relating to Stationary Engines and Turbines) [§116.211 of this title, Standard Exemption Number 6], except that registration using Form PI-7 [or PI-8] shall not be required; or

(v) boilers, heaters, or other combustion units, but not including stationary internal combustion engines or turbines, that satisfy all of the requirements of Subchapter A of Chapter 106 of this title and §106.183 of this title (relating to Boilers, Heaters, or other Combustion Units) [§116.211 of this title, Standard Exemption Number 7].

(C) (No change.)

(5) (No change.)

(6) High volume air sampling for net ground level concentrations of total particulate matter shall be performed upon request of the executive director or a designated representative. Each test shall consist of at least one upwind and one downwind sample taken simultaneously. The tests shall be performed during normal operations. A monitoring plan for high volume sampling shall be developed in accordance with the Office of Air Quality Management Plan, Appendix I ([United States Environmental Protection Agency (EPA)] Requirements for Quality Assurance Project Plans, dated February 1995) and the "TNRCC Sampling Procedures Manual," Chapter 11 ("Particulate Matter," dated January 1983 and revised July 1985), and shall require approval by the executive director or a designated representative prior to sampling. The executive director or a designated representative shall be afforded the opportunity to observe all such sampling equipment, operations, and records upon request.

(7) (No change.)

(8) The owner or operator of each MSWLF unit shall maintain complete and up-to-date records sufficient to readily determine continuous compliance with the requirements of this section for the previous five years of operation. All the records shall be maintained in an operating record in accordance with §330.113(b)(11) of this title (relating to Recordkeeping Requirements). The records shall be available for review upon request by representatives of the commission or any local air pollution agency having jurisdiction. The following recordkeeping requirements shall apply, in addition to those specified in 40 CFR 60, Subpart WWW.

(A) Permit holders who are subject to the exemptions of Chapter 106 of this title (relating to Exemptions from Permitting), as [a standard exemption] specified in paragraph (4) of this section shall maintain any records specified in the exemption.

(B) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER F : FLEXIBLE PERMITS

§§116.710, 116.711, 116.714, 116.715, 116.718, 116.721, 116.750, 116.760

The amendments are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.710. Applicability.

(a) (No change.)

[(b) Operations certification. Any person who obtains a flexible permit under this subchapter shall comply with §116.110(b) of this title.]

(b) [(c)] Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(b) [(c)] of this title, provided however, that all facilities covered by a flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual

emission limitation prior to the transfer of the permit by the commission [Texas Natural Resource Conservation Commission (TNRCC)]. After the sale of a facility or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the commission [TNRCC].

(c) [(d)] Submittal under seal of licensed professional engineer. All applications for a flexible permit or flexible permit amendment shall comply with §116.110(c) [(d)] of this title.

(d) [(e)] Responsibility for flexible permit application. The owner of the facility, group of facilities, or account or the operator of the facility, group of facilities, or account who is authorized to act for the owner is responsible for complying with this section, except as provided by subsection (b) [(c)] of this section.

§116.711. Flexible Permit Application.

Any application for a new flexible permit or flexible permit amendment must include a completed Form PI-1 General Application. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information which must be provided before the application is deemed complete. In order to be granted a flexible permit or flexible permit amendment, the owner or operator of the proposed facility shall submit information to the

commission [Texas Natural Resource Conservation Commission (TNRCC)] which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the proposed facility, group of facilities, or account as determined pursuant to §116.716 of this title (relating to Emission Caps and Individual Emission Limitations), will comply with all rules and regulations of the commission [TNRCC] and with the intent of the [Texas Clean Air Act (] TCAA)], including protection of the health and physical property of the people. In considering the issuance of a flexible permit for construction or modification of any facility, group of facilities, or account within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the commission [TNRCC] shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility, group of facilities, or account may have on the individuals attending these school facilities.

(2) Measurement of emissions. The proposed facility, group of facilities, or account will have provisions for measuring the emission of air contaminants as determined by the executive director [Executive Director]. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the commission's [TNRCC] "Compliance Sampling Manual."

(3) Best Available Control Technology (BACT). The proposed facility, group of facilities, or account will utilize BACT, with consideration given to the technical practicability, and

economic reasonableness of reducing or eliminating emissions from the facility on a proposed facility, group of facilities, or account basis. Control technology beyond BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities, or account basis, provided, however, that the existing level of control may not be lessened for any facility. For new facilities, the use of BACT shall be demonstrated for the individual facility.

(4) [Federal] New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet [at least] the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the [United States Environmental Protection Agency (EPA)] pursuant to authority granted under [the Federal Clean Air Act (FCAA)], §111, as amended. These requirements are enforceable under Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution).

(5) National Emission Standards for Hazardous Air Pollutants (NESHAPS) and Maximum Achievable Control Technology (MACT). The emissions from each facility as defined in 40 CFR Part 61 will meet [at least] the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, or any MACT standard as listed in 40 CFR Part 63, promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended. These requirements are enforceable under Chapter 126 of this title.

(6) Performance demonstration. The proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit application. The applicant may be required to submit additional engineering data after a flexible permit has been issued in order to demonstrate further that the proposed facility, group of facilities, or account will achieve the performance specified in the flexible permit. In addition, initial compliance testing with ongoing compliance determined through engineering calculations based on measured variables, parametric or predictive monitoring, stack monitoring, or stack testing may be required.

(7) Nonattainment review. If the proposed facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements under Subchapter D of Chapter 126 of this title (relating to Nonattainment Review) [the undesignated head concerning nonattainment review in Subchapter B of this chapter].

(8) Prevention of Significant Deterioration (PSD) review. If the proposed facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements under Subchapter E of Chapter 126 of this title (relating to Prevention of Significant Deterioration Review) [the undesignated head concerning PSD in Subchapter B of this chapter].

(9) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling and/or ambient monitoring may be required by the TNRCC's New Source Review Permits

Division [TNRCC Permits Program] to determine the air quality impacts from the facility, group of facilities, or account.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the proposed new or reconstructed facility is a major source for hazardous air pollutants, it shall comply with all applicable requirements under Subchapter K of Chapter 126 of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))).

(11) [(10)] Application content. In addition to any other requirements of this chapter, the applicant shall:

(A) identify each air contaminant for which an emission cap is desired;

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

(C) identify each source of emissions to be included in the flexible permit and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;

(D) for each emission cap, identify all associated EPNs and provide emission rate calculations based on the expected maximum capacity and the proposed control technology;

(E) for each individual emission limitation, identify the EPN and provide emission rate calculations based on the expected maximum capacity and the proposed control technology.

(12) [(11)] Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each unit to meet the emission cap and demonstrate compliance with all emission caps at expected maximum production capacity.

§116.714. Application Review Schedule.

The flexible permit application will be reviewed by the commission [Texas Natural Resource Conservation Commission] in accordance with §116.114 of this title (relating to Application Review Schedule).

§116.715. General and Special Conditions.

(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions. Upon a specific finding by the executive

director [Executive Director] that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under Subchapters D or E or K of Chapter 126 of this title (relating to Nonattainment Review; or Prevention of Significant Deterioration Review; or Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))) [the undesignated headings of Subchapter B of this chapter (relating to Nonattainment Review or Prevention of Significant Deterioration Review)], the permit may include a special condition which requires the permittee to obtain written approval from the executive director [Executive Director] before constructing a facility under a[standard exemption or] standard permit or an exemption under Chapter 106 of this title (relating to Exemptions from Permitting).

(b) (No change.)

(c) The following general conditions shall be applicable to every flexible permit.

(1) Voiding of permit. A flexible permit or flexible permit amendment under this subchapter is automatically void if the holder fails to complete construction as specified in the flexible permit. Upon request, the executive director [Executive Director] may grant a one time 12-month extension of the date to complete construction. This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

(2) Construction progress. The start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office of the commission [Texas Natural Resource Conservation Commission (TNRCC)] not later than 15 working days after occurrence of the event.

(3) Start-up notification. The appropriate Air Program Regional Office of the commission [TNRCC] and any local program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by the permit in such a manner that a representative of the commission [TNRCC] may be present. Phased construction, which may involve a series of facilities commencing operations at different times, shall provide separate notification for the commencement of operations for each facility.

(4) Sampling requirements. If sampling of stacks or process vents is required, the flexible permit holder shall contact the Engineering Services [Source and Mobile Monitoring] Section of the TNRCC Office of Air Quality prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate TNRCC regional office [Air Program Regional Office of the TNRCC]. The flexible permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(5) Equivalency of methods. It shall be the responsibility of the flexible permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the flexible permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director [Executive Director] prior to their use in fulfilling any requirements of the permit.

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

(7) - (8) (No change.)

(9) Maintenance of emission control. The facilities covered by the flexible permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Record Keeping Requirements and Maintenance, Start-up and Shutdown Reporting, Record Keeping, and Operational Requirements [Notification Requirements for Major Upset and Notification Requirements for Maintenance]).

(10) Compliance with rules. Acceptance of a flexible permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all Rules, Regulations, and Orders of the commission [Commission] issued in conformity with the TCAA [Texas Clean Air Act] and the conditions precedent to the granting of the permit. If more than one state [or federal] rule or regulation or flexible permit condition are applicable, then the most stringent limit or condition shall govern [and be the standard by which compliance shall be demonstrated]. If any federal rule or regulation is applicable, the facility shall also be subject to Chapter 126 of this title (relating to Federal New Source Review Requirements for Control of Air Pollution). Acceptance includes consent to the entrance of commission [Commission] employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the flexible permit.

(d) (No change.)

§116.718. Significant Emission Increase.

An increase in emissions from operational or physical changes at an existing facility covered by a flexible permit is insignificant, for the purposes of [state] new source review under this chapter [subchapter], if the increase does not exceed either the emission cap or individual emission limitation. This section does not apply to an increase in emissions from a new facility nor to the emission of an air contaminant not previously emitted by an existing facility.

§116.721. Amendments and Alterations.

(a) Flexible permit amendments. All representations with regard to construction plans and operation procedures in an application for a flexible permit, as well as any general and special provisions attached, become conditions upon which the subsequent flexible permit is issued. It shall be unlawful for any person to vary from such representation or flexible permit provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions, unless application is made to the executive director [Executive Director] to amend the flexible permit in that regard and such amendment is approved by the executive director [Executive Director] or commission [Commission]. Applications to amend a flexible permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.711 of this title (relating to Flexible Permit Application).

(b) Flexible permit alterations.

(1) (No change.)

(2) All flexible permit alterations which may involve a change in a general or special condition contained in the flexible permit, or affect control equipment performance, must receive prior approval by the executive director [Executive Director]. The executive director [Executive Director] shall be notified in writing of all other flexible permit alterations within ten days of implementing the change, unless the permit provides for a different method of notification. Any flexible permit alteration request or notification shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.711 of this title, including the protection of public health and welfare. The appropriate Texas Natural Resource Conservation Commission Regional Office and any local air pollution program having jurisdiction shall be provided copies of all flexible permit alteration documents.

(3) (No change.)

(c) (No change.)

(d) Exemption under Chapter 106 of this title (relating to Exemptions from Permitting)

[Standard exemption] in lieu of permit amendment or alteration.

(1) Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for an exemption under Chapter 106 of this title [Subchapter C of this chapter (relating to Permit Exemptions)] unless prohibited by permit provision as provided in §116.715 of this title (relating to General and Special Conditions). All such exempted changes to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(2) Emission increases authorized by Chapter 106 of this title [standard exemption] at an existing facility covered by a flexible permit shall not cause an exceedence of the emissions cap or individual emission limitation.

§116.750. Flexible Permit Fee.

(a) - (b) (No change.)

(c) Payment of fees. All permit fees for a flexible permit shall be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the application for flexible permit or flexible permit amendment to the TNRCC [Office of Air Quality] New Source Review Permits Division [Program]. Required fees must be received before the agency will begin examination of the application.

(d) Return of fees. Fees must be paid at the time an application for a flexible permit or flexible permit amendment is submitted. If the applicant withdraws the application prior to issuance of the flexible permit or flexible permit amendment, one-half of the fee will be refunded, except that the entire fee will be refunded for any such application for which an exemption under Chapter 106 of this title (relating to Exemptions from Permitting) [a standard exemption] is allowed. No fees will be refunded after a deficient application has been voided, denied, or after a flexible permit or flexible permit amendment has been issued by the agency.

§116.760. Flexible Permit Renewal.

Flexible permits will be renewed in accordance with Subchapter C [D] of this chapter (relating to Permit Renewals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER A : DEFINITIONS

§116.12

The repeal is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed repeal implements Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.12. Nonattainment Review Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

NONATTAINMENT REVIEW

§116.150, §116.151

The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed repeals implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Area.

§116.151. New Major Source or Major Modification in Nonattainment Area Other than Ozone.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§§116.160-1116.163

The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed repeals implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.160. Prevention of Significant Deterioration Requirements.

§116.161. Source Located in an Attainment Area with a Greater than De Minimis Impact.

§116.162. Evaluation of Air Quality Impacts.

§116.163. Prevention of Significant Deterioration Permit Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.

EMISSION REDUCTIONS : OFFSETS

§§116.170, 116.174, 116.175

The repeals are proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §§382.017, 382.051, and 382.0541, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed repeals implement Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

§116.170. Applicability for Reduction Credits.

§116.174. Determination by Executive Director to Authorize Reductions.

§116.175. Recordkeeping.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.