

The commission proposes new §§126.10-126.12, 126.109-126.113, 126.120-126.126, 126.130-126.134, 126.136, 126.137, 126.150, 126.151, 126.160-126.163, 126.170-126.172, 126.310-126.314, 126.410-126.419, 126.510, 126.610, 126.611, 126.614, 126.615, 126.617, and 126.710-126.713, concerning Federal New Source Review Requirements for Control of Air Pollution.

**EXPLANATION OF PROPOSED RULES.** The purpose of the new Chapter 126 is to set forth the federal new source review (NSR) requirements for the construction of any new facility or the modification of any existing facility which may emit air contaminants into the air of the state. These requirements, which will be incorporated into the State Implementation Plan (SIP) upon approval by the United States Environmental Protection Agency (EPA), will be enforceable under both federal and state law. Facilities will continue to be subject to the state NSR requirements pursuant to 30 TAC Chapter 116, concerning State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification.

In general, the proposed regulations will specify the federal NSR regulations that apply to any new facility or the modification of any existing facility. This includes facilities subject to prevention of significant deterioration (PSD) and nonattainment permitting. In addition, the proposed Chapter 126 was developed, in part, to clarify the federal minor new source review (MNSR) requirements specified in the Federal Clean Air Act (FCAA), §110(a)(2)(C) and 40 Code of Federal Regulations (CFR), Part 51, §§51.160-51.164. Chapter 126 will also implement a program to meet the requirements of the 1990 FCAA amendments, §112(g), as set forth in 40 CFR 63, §§63.40-63.44, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g)).

It should be noted that the federally required major NSR program (i.e., PSD and nonattainment permitting programs) that the commission proposes to repeal in Chapter 116 concurrent with this Chapter 126 rulemaking 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 the federal operating permit 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 federal NSR requirements of Chapter 126 will become applicable requirements of a federal operating permit under Chapter 122 after Chapter 126 is approved by the commission and approved as a SIP revision by EPA. 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 this chapter and Chapter 116.

An issue paper has been prepared to supplement the preamble that discusses in greater detail the background and rationale for the reorganization of Chapter 116, the Chapter 126 proposal, 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 Chapter 126 does 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 to the EPA on January 26, 1998, the staff was allowed to do a partial regulatory reform effort. Rather, Chapter 126 is written to be consistent with the style and content of Chapter 116. Whenever possible, identical sections repealed in Chapter 116 are being proposed in Chapter 126.

The following describes the proposed subchapters of Chapter 126:

SUBCHAPTER A: DEFINITIONS. The commission proposes §126.10, concerning Nonattainment Review Definitions. Aside from some minor editorial changes, the definitions in §126.10 are the same as those repealed from §116.12. The only change was made to correct the definition of  $PM_{10}$  in Table 1, concerning Major Source/Major Modification Emission Thresholds.

In addition, the commission proposes §126.11, concerning Compliance History Definitions. The definitions in this new section are identical to the compliance history definitions of §116.11. The compliance history definitions will be used in conjunction with the proposed §126.120, concerning applicability of compliance history.

Finally, the commission proposes §126.12, concerning Section 112(g) Definitions. The definitions contained in §126.12 will be used in conjunction with Subchapter K, concerning Hazardous Air Pollutants: Regulation Governing Constructed or Reconstructed Major Sources (§112(g)). The definitions in §126.12 are essentially the same as those contained in 40 CFR 63, §63.41, relating to Definitions under Subpart B, Requirements for Control Technology (see 61 FR 68399).

**SUBCHAPTER B: NEW SOURCE REVIEW.** The commission proposes §126.109, concerning Purpose and Scope, in order to clarify that Chapter 126 sets forth the federal requirements for the construction of any new facility or the modification of any existing facility which may emit air contaminants. Section 126.109 emphasizes that any person constructing a new facility or modifying an existing facility must also comply with requirements of Chapter 116 for permits and 30 TAC Chapter 106, concerning Exemptions from Permitting. In order to minimize any duplication, §126.109 allows for a single permit document to be issued that contains the requirements of both Chapter 126 and 116 as determined by the executive director.

The commission proposes §126.110, concerning applicability of Chapter 126, to indicate that any person who plans to construct any new or modified facility which may emit air contaminants, must comply with any applicable requirement of §126.111, concerning Federal New Source Review Requirements. Similar to §116.110, concerning applicability of Chapter 116, §126.110 proposes identical requirements for change in ownership and submittals requiring seal of a professional engineer. As a result, there should be no change to the status quo for change in ownership and submittals requiring the seal of a professional engineer. In addition, §126.110(d) clarifies that a new or modified

facility subject to PSD, nonattainment, or FCAA, §112(g) must submit a permit application meeting the requirements of §126.112, concerning General Application. However, if the facility is only subject to federal MNSR, then a permit application is not required.

The commission proposes that in order to be authorized for construction, a new or modified facility must comply with the requirements of §126.111, concerning Federal New Source Review Requirements, as applicable. These requirements include: federal MNSR (§126.111(1)), new source performance standards (NSPS) (§126.111(2)), National Emission Standards for Hazardous Air Pollutants (NESHAP) (§126.111(3)), nonattainment review (§126.111(4)), PSD review (§126.111(5)), and §112(g) review (§126.111(6)).

The federal MNSR requirements included in §126.111(1) are already existing SIP requirements found in 30 TAC Chapters 111, 112, 113, 115, 117, and 119 that are necessary to attain or maintain the National Ambient Air Quality Standards (NAAQS). In order to meet the requirements of FCAA, §110(a)(2)(C) and 40 CFR 51, §§51.160-164, the commission proposes to use these existing requirements as the basis of its federal MNSR program. In order to be consistent, the portions of the state rules referenced in §126.111(1) are identical to the state rules included in the proposed definition of applicable requirement in Chapter 122. The proposed federal MNSR program in Texas will not include case-by-case permit determinations. Rather, it will consist of a permit-by-rule concept that does not involve individual authorizations.

The commission solicits comments on whether the proposed §126.111(1) is sufficient to meet the federal MNSR requirements of FCAA, §110(a)(2)(C) and 40 CFR Part 51 §51.160-51.164. The commission also solicits alternate proposals that satisfy these federal MNSR requirements. The commission will consider all comments and may revise its proposed federal MNSR proposal based on the comments received.

The NSPS and NESHAP requirements stated in §126.111(2) and (3) simply reference 40 CFR Parts 60, 61, and 63 and require that the emissions from the proposed facility be in compliance with these federal requirements. Section 126.111(4) and (5) state that if the proposed facility or modification triggers nonattainment or PSD review, it must comply with Subchapter D of Chapter 126 (concerning Nonattainment Review) or Subchapter E of Chapter 126 (concerning Prevention of Significant Deterioration Review). The final section of the proposed federal NSR requirements, §126.111(6), states that if the proposed new or reconstructed facility is a major source for hazardous air pollutants, it must comply with all requirements under Subchapter K, concerning Hazardous Air Pollutants: Regulation Governing Constructed or Reconstructed Major Sources (§112(g)). This subchapter implements the requirements of §112(g).

The commission proposes §126.112, concerning General Application, to provide the general requirements for facilities that must submit permit applications. Except for the reference to permit application requirements for facilities subject to §112(g) review, §126.112(a), concerning responsibility for permit application, is written to be consistent with §116.111, concerning general application for facilities subject to Chapter 116. In addition, §126.112 provides five criteria that must be met in order

to be granted a permit under Chapter 126. These criteria include: protection of the public health and welfare, measurement of emissions, best available control technology (BACT), performance demonstration, and air dispersion modeling. The same five criteria are included in §116.111 with the addition of NSPS, NESHAP, nonattainment, and PSD that are included in §126.111 rather than §126.112. As such, the general requirements in order to be granted a permit under Chapter 126 and Chapter 116 are the same with the exception of requirements for applications submitted under Subchapter K, concerning §112(g) review, since this is a new program not currently included in Chapter 116.

Section 126.112 also includes subsection (b) that allows the executive director to void a permit application if the applicant does not make a good faith effort to submit in a timely manner, adequate information in response to any deficiency noted by the executive director. This section is identical to §116.114(b), concerning the voiding of a deficient application under Chapter 116.

The commission proposes §126.113, concerning General and Special Conditions, stating that the executive director may issue a permit containing general and special conditions. Furthermore, §126.113(b) lists the general conditions that apply to all permits issued or modified after August 16, 1994. The general conditions listed in §126.113(b) are identical to those contained in §116.115(b).

Similar to §116.115(c), the commission proposes §126.113(c), which states that the commission may add special permit conditions that are more restrictive than the requirements of Title 30 of the Texas

Administrative Code. This is a carryover from Chapter 116 and is not a new requirement of NSR in Texas.

The commission also proposes §126.113(d), which states that all representations with regard to construction plans and operation procedures in a permit application become conditions upon which the subsequent permit is issued. Section 126.113(d) is identical to §116.116(a), concerning representations and conditions of a permit under Chapter 116, and therefore will not be a new requirement for facilities currently complying with NSR requirements.

The commission proposes in §126.113(e) to require a permit modification if a change is made as currently required by §116.116(b), concerning Permit Amendments. As such, this will not be a new requirement for facilities currently complying with NSR requirements.

In §126.113(f), the commission reminds owners and operators of new or modified facilities that even if they are not subject to Chapter 126, they must still comply with the permit procedures contained in Chapter 116.

The commission proposes §§126.120-126.126, concerning Compliance History, requiring that the commission compile a compliance history for new, modified, or renewed permit applications. Aside from the citation references to Chapter 126, the compliance history requirements in Chapter 126 are essentially identical to those specified in §116.120-116.126, concerning compliance history. In order to maintain a consistent review of both state-only and federal NSR review, the commission determined

that facilities subject to Chapter 126 must also comply with the requirements surrounding compliance history when obtaining a new, modified, or renewed permit.

**SUBCHAPTER C: PUBLIC NOTIFICATION AND COMMENT.** The commission proposes requirements for public notification and comment under §126.130, concerning Applicability. Under this section, the commission determined that the owner or operator of a new or modified facility subject to §126.111(1)-(3) (i.e., federal MNSR, NSPS, and NESHAP) must notify the commission within 21 days following the construction or commencement of operation as such new or modified facilities. The commission determined that this type of notification was consistent with the type of notification proposed under Chapter 122, concerning Federal Operating Permits, for similar type authorizations that do not require case-by-case commission decisions.

For facilities subject to Chapter 122, the notice requirement could be satisfied by using the appropriate procedures specified in the proposed revisions to Chapter 122.

For facilities not subject to Chapter 122, but which are subject to Chapter 116, the notice requirements would be satisfied by providing notice in any permit application required under Chapter 116. The current public notice requirements under Chapter 116 include a 30-day public notice in a newspaper in general circulation in the municipality that the facility is located or proposed to be located, sign-posting requirements, and notification to affected agencies. In addition, bilingual newspaper notice and sign-posting is also required in certain cases. The public notification and comment procedures of Chapter 116 are contained in §§116.130-116.134, 116.136, and 116.137.

For facilities subject to §126.111(4)-(6) (i.e., nonattainment, PSD, or §112(g) review), public notification requirements include a 30-day public notice in a newspaper in general circulation in the municipality that the facility is located or proposed to be located, sign-posting requirements, and notification to affected states. In addition, bilingual newspaper notice and sign-posting is also required in certain cases. Aside from notification of final action by the commission, these requirements are essentially identical to those contained in §§116.130-116.134, 116.136, and 116.137.

Under §126.137, concerning Notification of Final Action by the Commission, the commission proposes to notify persons submitting written comments or persons submitting a request to be notified of the executive director's final decision at the same time as the applicant is notified. This is consistent with the similar provision proposed under §116.137(c). However, the proposed §126.137 does not contain the requirement to notify the applicant of a final decision to grant or deny the permit within 180 days after receipt of a completed application. The commission determined that this requirement was not necessary for permit applications subject to federal NSR, but rather only applies to state-only NSR.

Finally, 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 §126.132(a)(11).

**SUBCHAPTER D: NONATTAINMENT REVIEW.** The commission proposes §§126.150-126.151 as the provisions governing nonattainment review in Texas. Except for citation references to Chapter 126,

the proposed sections of Chapter 126 are identical to the repealed §116.150 and §116.151 that previously contained the nonattainment review requirements. As previously mentioned, nonattainment review, part of the federal NSR requirements under Title I of the FCAA and 40 CFR Part 51 and 52, is being moved to Chapter 126 to clarify the distinction between state-only NSR and federal NSR requirements. The substance of nonattainment review, however, will not change.

**SUBCHAPTER E: PREVENTION OF SIGNIFICANT DETERIORATION REVIEW.** The commission proposes §§126.160-126.163 as the provisions governing the prevention of significant deterioration review in Texas. Except for the citation references to Chapter 126, the proposed sections of Chapter 126 are identical to the repealed §§116.160-116.163 that previously contained the PSD review requirements. Just as with nonattainment review, PSD review is also part of the federal new source review requirements under Title I of the FCAA and 40 CFR Part 51 and 52. Similarly, PSD review requirements are being moved to Chapter 126 to clarify the distinction between state-only NSR and federal NSR requirements. The substance of PSD review, however, will not change.

**SUBCHAPTER F: EMISSION REDUCTIONS: OFFSETS.** In accordance with the proposal to adopt the nonattainment review requirements under §126.150 and §126.151, the commission proposes Subchapter F, §§126.170-126.172, concerning Emission Reductions: Offsets. The sections proposed in Subchapter F are identical to those repealed under §§116.170, 116.174, and 116.175, except for the citation references to Chapter 126, and are necessary in Chapter 126 because emission reduction and offsets are relied on in the nonattainment review process.

SUBCHAPTER G: PERMIT RENEWALS. The commission proposes to require holders of PSD and nonattainment permits, issued or renewed after July 24, 1992, to apply for a permit renewal every ten years after the date of issuance or renewal. The commission was granted delegation of the PSD program on July 24, 1992. After that time, the commission began issuing PSD permits that contain both state and federal requirements. As a result, PSD permits issued after July 24, 1992, are required to apply for permit renewals. PSD permits issued before July 24, 1992, are not required to be renewed. In addition, there were not any nonattainment permits issued prior to July 24, 1992. Therefore, all nonattainment permits will have to be renewed according to Subchapter G of Chapter 126. The commission also proposes that permits containing §112(g) determinations issued under Subchapter K, concerning Hazardous Air Pollutants: Regulation Governing Constructed or Reconstructed Major Sources (§112(g)) be renewed. Since §112(g) determinations are considered to be a part of major NSR along with PSD and nonattainment, the commission determined that, for consistency, permits containing §112(g) determinations should also be renewed.

In general, the requirements of Subchapter G of Chapter 126 follow the permit renewal requirements of Subchapter C of Chapter 116, concerning Permit Renewals. In order to be consistent with the application process contained in Chapter 116, the permit renewal application section proposed in §126.311 is essentially identical to the requirements of §116.311, concerning Permit Renewal Application. Aside from the citation references to Chapter 126, one of the main differences is in §126.311(d), which requires that permits be renewed every ten years rather than the range between 5-15 years specified in §116.311(d). A ten-year renewal period was selected because the Texas Clean Air Act, §382.055(a), concerning Review and Renewal of Preconstruction Permit, does not provide a range

in the renewal cycle of a federal permit. Rather, the commission determined that a range in the renewal cycle is only provided for nonfederal sources which are regulated under Chapter 116. Another difference occurs in §126.312, concerning Public Notification and Comment Procedures, where the commission is proposing to combine the public notice requirements for renewals under Chapter 116 and Chapter 126. Combining public notices should minimize any potential duplication in the renewal process of both regulations.

It should be noted that the commission also proposes in §126.313(c) not to require two renewal fees if the permit is also subject to the renewal requirements of Chapter 116. A similar provision is being proposed in §116.313(c). In order to refer to the appropriate chapters from the commission's procedural rules concerning contested case hearings, the commission proposes language in §126.314(b) that is slightly different than the analogous section in Chapter 116, §116.314(b). Similar language is also being proposed in §116.314(b).

**SUBCHAPTER H: EMERGENCY ORDERS.** The commission proposes Subchapter H, concerning Emergency Orders, so that an owner or operator of a facility may apply to the executive director for an emergency order to authorize the immediate action for the addition, replacement, or repair of facilities or control equipment, and associated air emissions in the event of a catastrophe. Aside from citation references to Chapter 126, this subchapter is essentially identical to Subchapter D of Chapter 116, concerning Emergency Orders. The only difference is that §126.413, concerning Public Hearing for an Emergency Order, has been written to refer to the appropriate chapters from the commission's

procedural rules concerning contested case hearings. Similar language is also being proposed in §116.413.

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 §126.419, 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 I: POTENTIAL-TO-EMIT LIMITATIONS.** The commission proposes §126.510 as a mechanism to establish federally enforceable emission limitations through a certified registration of emissions. Section 126.510 is being proposed to provide facilities, subject to Chapter 116 or Chapter 106, a means to establish federally enforceable emission limitations if it is finally determined by EPA that emission limitations must be federally enforceable in order to opt out of federal programs such as Title V, PSD, nonattainment, or §112(g). Since Chapter 116 and 106 will no longer be included in the SIP, the emission limitations in Chapter 116 and 106 authorizations will no longer be federally enforceable.

It should be noted that a recent court decision (*Chemical Manufacturers Assn. v. EPA*, No. 89-1514 (D.C. Cir. September 15, 1995)) vacated the federal enforceability requirement of the potential to emit definitions in the PSD and nonattainment NSR regulations. In effect, the definition of potential to emit in 40 CFR Part 51 now reads, in part, “federally enforceable or legally and practically enforceable by a state or local air pollution control agency.” As a result, once Chapter 126 is adopted into the SIP and Chapter 116 and 106 are removed from the SIP, emission limitations no longer have to be federally enforceable, rather they must be legally and practically enforceable by a state or local air pollution control agency. This would allow Chapter 116 and 106 authorizations to serve the purpose of opting out of major NSR and Title V. In the event that federally enforceable limitations are necessary to opt out of these programs, facilities may use the certified registration of emissions provided in §126.510.

The proposed requirements of §126.510 are similar to those provided in §122.122, concerning Potential to Emit. Essentially, the owner or operator of a facility must complete a registration that includes documentation as to the basis of the emission rates contained in the registration. In addition, all the representations in the registration become conditions upon which the facility shall operate. The registration and other supporting information must be maintained at the facility site or at an accessible designated location and made available to the commission or any other air pollution control agency having jurisdiction.

SUBCHAPTER J: STANDARD PERMITS. The commission proposes Subchapter J, concerning Standard Permits, which includes §§126.610, 126.611, 126.614, 126.615, and 126.617, concerning Applicability, Registration Requirements, Standard Permit Fees, General Conditions, and Standard Permits for Pollution Control Projects, respectively. Except for the citation references to Chapter 126, these proposed sections are essentially the same as those contained in the proposed §§116.610, 116.611, 116.614, 116.615, and 116.617, concerning Applicability, Registration Requirements, Standard Permit Fees, General Conditions, and Standard Permits for Pollution Control Projects, respectively. The commission modified the applicability provisions of §116.610 by including the requirement to meet all requirements of Part 63 in §126.610(a)(4). The commission proposes a new §126.610(d) to clarify that facilities subject to Subchapter K of Chapter 126 are not eligible for a standard permit under Chapter 126.

The only other substantive change from the Chapter 116 standard permit sections is contained in the general conditions of §126.615. Unlike Chapter 116, the commission did not include the requirements for construction progress or start-up notification that are provided in §116.615(4) and (5). The requirements were not included because the only standard permit provided for in Chapter 126 (§126.617) does not contain these requirements. Likewise, the requirements of §116.615(4) and (5) also do not apply to standard permit for pollution control projects contained in §116.617.

The commission proposes §126.617, concerning Standard Permits for Pollution Control Projects, to specifically allow 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. In addition, this standard permit would also authorize the substitution of compounds used in manufacturing processes for the purpose of complying with governmental standards or to reduce emission effects.

For all practical purposes, the standard permit in §126.617 is identical to the standard permit contained in §116.617, concerning Standard Permits for Pollution Control Projects. Of all the standard permits contained in the proposed Subchapter E of Chapter 116, the commission determined that the only one necessary to be included in Chapter 126 was the standard permit for pollution control projects. This type of standard permit is needed in Chapter 126 for instances when a facility proposes a modification to install emissions control equipment, which due to the operation of the control equipment, increases one air pollutant in the process of decreasing another air pollutant.

In the case of this type of modification, the standard permit contained in §126.617 would authorize the installation of the control equipment even if the modification would have triggered a PSD or nonattainment review. In addition to being federally enforceable, the proposed modification would have to meet all the provisions of §126.617, including ensuring that any significant net increase will not: cause or contribute to a violation of any national ambient air quality standard; cause or contribute to a violation of any PSD increment; or cause or contribute to a violation of any PSD visibility limitation.

**SUBCHAPTER K: HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING**

**CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (§112(g)).** In conjunction with the proposed Chapter 126, the commission is proposing a program to meet the requirements of the 1990 FCAA amendments, §112(g), as set forth in 40 CFR 63, §§63.40-63.44, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources. Included in Title III of the 1990 FCAA amendments, concerning Hazardous Air Pollutants, §112(g) was designed to ensure that emissions of toxic air pollutants do not increase if a facility is constructed or reconstructed before EPA issues a maximum achievable control technology standard (MACT) or air toxics regulation for that particular category of sources or facilities. After the effective date of the commission's §112(g) program (June 29, 1998), all owners and operators of major sources subject to the commission's approved operating permits program that are constructed or reconstructed will be required to install MACT unless specifically exempted. In §126.711, concerning Exclusions, the commission is currently proposing the same set of exclusions that are provided in 40 CFR 63, §63.40(c)-(f). The commission has determined that in order to provide a program consistent with the requirements of 40 CFR Part 63, §§63.40-63.44, the same set of exclusions should be provided.

After June 29, 1998, sources subject to the commission's approved interim operating permits program that trigger §112(g) review must apply to the commission for a case-by-case MACT determination under §126.712, concerning Application. Sources subject to the full operating permits program that trigger §112(g) review will only have to apply for a case-by-case MACT determination after the commission receives full program approval from the EPA.

In general, if the owner or operator wants to construct or reconstruct a major source (as defined in §126.12, concerning §112(g) Definitions), then prior to that construction or reconstruction, the owner or operator must apply to the commission for a case-by-case MACT determination under §126.712, concerning Application. The application must contain the information required by the commission as provided in §126.112, concerning General Application. In addition, the application must specify the emission controls that will ensure that MACT will be met. Finally, the application for the proposed constructed or reconstructed major source must undergo the public notice requirements contained in §126.130, which includes a 30-day public comment period and opportunity for hearing. After fully considering public comments and the results of any hearing, the commission would then issue a permit authorizing the construction or reconstruction of the major source. The case-by-case MACT determination codified in the §112(g) permit issued pursuant to Chapter 126 would become an applicable requirement of Chapter 122, concerning Federal Operating Permits, after satisfying the appropriate operating permit revision process.

With regard to major sources that are issued permits containing case-by-case MACT determinations under §112(g) that later become subject to MACT standard or MACT requirement, the commission currently envisions including a permit condition that would nullify the §112(g) determination upon the promulgation of the new MACT standard or requirement and the incorporation of that standard/requirement into the site's federal operating permit. Provisions not directly related to the case-by-case MACT determination would remain in effect under the Chapter 126 permit. In the federal operating permit, the commission will specify a compliance date with the new standard not to exceed eight years.

In proposing Subchapter K of Chapter 126, the executive director is certifying that the proposed §112(g) program satisfies all applicable requirements established by 40 CFR §§63.40-63.44 and establishes an effective date of June 29, 1998. As outlined in the EPA preamble to the final rules implementing §112(g) (see 61 FR 68390), the program proposed by the commission is not required to have EPA approval before taking effect.

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 the 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 summarizes 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 construction and operation of the new or modified 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 new Chapter 126 will contain, in addition to the PSD and nonattainment permitting requirements, a new federal MNSR program. This program is based solely on the existing state rules found in Chapters 111, 112, 113, 115, 117, and 119 that are necessary to attain or maintain the NAAQS. In order to demonstrate compliance with these rules, applicants may be required to provide information in applications for new permits or modifications to existing permits. Since facilities in the areas affected by these state rules are already required to comply with those rules, no new fiscal impacts are anticipated as a result of this proposal.

Chapter 126 proposes to require renewals for PSD, nonattainment, and §112(g) permits. PSD and nonattainment permits that were issued by the commission after the date of delegation of those programs, July 24, 1992, are already subject to the renewal process. This is because these permits were combined with state permits which have always been renewed. Section 112(g) permits issued under Chapter 126 will likely be combined with permits issued under Chapter 116. Since all of these permits will go through the renewal process, the §112(g) permits will be renewed by default. If the commission issues a permit that only contains §112(g) determinations, it will also be renewed.

Since the renewal reviews under Chapter 126 will be combined with renewals under Chapter 116, fees will not be required for renewal applications submitted under Chapter 126. Thus, there are no new fiscal implications because of the renewal requirement.

Chapter 126 will also implement the requirements of Title III of the FCAA, Hazardous Air Pollutants, §112(g), Modifications, and 40 CFR Part 63 Hazardous Air Pollutants: Regulations Governing

Constructed or Reconstructed Major Sources (§112(g)). Section 112(g) applies to an owner or operator who constructs or reconstructs a major source of hazardous air pollutants after the effective date of §112(g)(2)(B) and the effective date of a Title V program in a state in which the major source is (or would be) located unless the major source in question has been specifically regulated or exempted from regulation under a standard issued under the FCAA, §112(d), (h), or (j) and incorporated in another subpart of Part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction before the effective date of §112(g)(2)(B). Chapter 126 proposes an effective date of June 29, 1998, for major sources subject to §112(g).

Part 63 is a preconstruction review program for hazardous air pollutants and will be implemented by the commission using a process in Chapter 126 that is similar to the permitting process in Chapter 116. All applications that are subject to §112(g) must undergo public notice, so this new requirement will have fiscal implications for applicants who are subject to the program. This is because these types of changes, prior to the requirement to meet §112(g), could have obtained a NSR permit under Chapter 116 or an exemption under Chapter 106 without having to provide public notice. Although this is a new federally required program, minimal fiscal impacts are anticipated since few major sources are expected to be subject to the program and it is likely that the review can be combined with other NSR related actions.

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 is 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 of 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 will be that the current 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 NSR 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.

The provisions of Chapter 126 will also implement the new requirements of Title III of the FCAA, Hazardous Air Pollutants, §112(g), Modifications, and 40 CFR Part 63 Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g)) for the permitting of construction or reconstruction of major sources of hazardous air pollutants. This new program is

required to be implemented in states after the effective date of §112(g)(2)(B) and the effective date of a state's Title V operating permit program. The public benefit from the implementation of this program is that the commission, and not the EPA, will be the agency responsible for the oversight of the new program. The provisions of Chapter 126 will provide for a streamlined and efficient program to implement the requirements of §112(g). There will be no significant effect on the regulated community or small businesses. There is no anticipated significant 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.

Chapter 126 will implement the requirements of Title III of the FCAA, Hazardous Air Pollutants, §112(g), Modifications, and 40 CFR Part 63 Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g)). This is a new federally required program for the construction or reconstruction of a major source of hazardous air pollutants.

The proposed amendments to Chapter 116, the new Chapter 126, and the related SIP revisions are being proposed solely 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 rule, Chapter 116, into two rules, one that is federally enforceable and one that is state enforceable. The proposed rules will not make the existing requirements any less stringent because facilities must meet the existing requirements of PSD and nonattainment review which are not being modified. The proposed rulemaking and SIP revision will achieve its stated purpose by addressing the EPA’s interim program approval criteria and by implementing the requirements of §112(g).

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission’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 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 the applicable goals and policies

of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed 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 minor NSR 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 rule(s) with the CMP goals and policies during the public comment period.

STATE IMPLEMENTATION PLAN REVISION. The commission is proposing to submit Chapter 126 to the EPA for inclusion in the SIP in order to fulfill the federal NSR requirements and the requirements for constructed or reconstructed major sources of hazardous air pollutants under §112(g)

and 40 CFR Part 63, §§63.40-63.44. In addition, the commission is proposing in concurrent rulemaking, amendments to Chapter 116 which, upon approval by EPA, would remove Chapters 116 and 106 from the SIP.

**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, 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 new sections 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 new sections implement the Texas Health and Safety Code, §382.017, concerning Rules, and §382.0541, concerning Administration and Enforcement of Federal Operating Permit.

The 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**

### **§§126.10-126.12**

#### **§126.10. Nonattainment Review Definitions.**

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in the undesignated head regarding Nonattainment Review, shall have the following meanings, unless the context clearly indicates otherwise.

**Actual emissions** - Actual emissions as of a particular date shall equal the average rate, in tons per year (tpy), at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions.

For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit the unit on that date.

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

(A) the applicable standards set forth in Title 40 Code of Federal Regulations (CFR), Part 60 or 61;

(B) the applicable State Implementation Plan (SIP) emissions limitation including those with a future compliance date; or

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

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

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

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

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

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

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

**Contemporaneous period** - Defined as follows.

(A) For major sources with the potential to emit 250 tpy or more of a nonattainment pollutant, the period between:

(i) the date five years before construction on the particular change commences or November 15, 1992, whichever date is earlier;

(ii) the date that the increase from the particular change occurs.

(B) For major sources with the potential to emit less than 250 tpy of a nonattainment pollutant, the period between:

(i) the date five years before construction on the particular change commences; and

(ii) the date that the increase from the particular change occurs.

(C) Notwithstanding subparagraphs (A) and (B) of this definition, for major sources of nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone in ozone nonattainment areas, the contemporaneous period shall begin no earlier than November 15, 1992.

***De minimis* threshold test** - A method of determining if a proposed emission increase will trigger nonattainment review. The summation of the proposed increase with all other creditable source emission increases and decreases during the contemporaneous period is compared to the MAJOR MODIFICATION column of Table I (in tpy) for that specific nonattainment area. If the major modification level is exceeded, then nonattainment review is required.

**Lowest achievable emission rate** - For any emitting facility, that rate of emissions of a contaminant which does not exceed the amount allowable under applicable New Source Performance Standards promulgated by the EPA under the FCAA, §111, and which reflects the following:

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

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

**Major facility/stationary source** - Any facility/stationary source which emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I of this section or more of any air contaminant (including volatile organic compounds (VOC)) for which a National Ambient Air Quality Standard (NAAQS) has been issued. Any physical change that would occur at a stationary source not qualifying as a major stationary source in Table I of this section, if the change

would constitute a major stationary source by itself. A major stationary source that is major for VOC or NO<sub>x</sub> shall be considered major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in Title 40 CFR, Part 51.165(a)(1)(iv)(C).

**Major modification** - Any physical change in, or change in the method of, operation of, a facility/stationary source that causes a significant net emissions increase for any air contaminant for which an NAAQS has been issued. At a facility/stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I. A physical change or change in the method of operation shall not include:

(A) routine maintenance, repair, and replacement;

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

(C) use of an alternative fuel by reason of an order or rule of the FCAA, §125;

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

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

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

(G) any change in ownership at a stationary source.

Figure: 30 TAC §116.10 - Major modification definition (G)

**TABLE I**

**MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS<sup>1</sup>**

<b>POLLUTANT</b>	<b>MAJOR SOURCE</b>	<b>MAJOR MODIFICATION<sup>2</sup></b>	<b>OFFSET RATIO</b>
<b>net increase</b>	<b>tons/year</b>	<b>tons/year</b>	<b>minimum</b>
<b>OZONE<sup>3</sup></b>			
I marginal	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
<b>CO</b>			
I moderate	100	100	1.00 to 1 <sup>4</sup>
II serious	50	50	1.00 to 1 <sup>4</sup>
<b>SO<sub>2</sub></b>	100	40	1.00 to 1 <sup>4</sup>
<b>PM<sub>10</sub></b>			
I moderate	100	15	1.00 to 1 <sup>4</sup>
II serious	70		1.00 to 1 <sup>4</sup>
<b>NO<sub>x</sub></b>	100	40	1.00 to 1 <sup>4</sup>
<b>Lead</b>	100	0.6	1.00 to 1 <sup>4</sup>

<sup>1</sup>Texas nonattainment area designations are specified in Title 40, Code of Federal Regulations, §81.344.

<sup>2</sup>The major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO<sub>x</sub> and VOC are specified in §126.150 and for other pollutants are equal to the major modification level listed in Table I.

<sup>3</sup>VOC and NO<sub>x</sub> are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under 30 TAC §126.150, concerning New Major Source or Major Modification in Ozone Nonattainment Area. For those counties which are designated nonattainment for ozone, but have been granted a permanent exemption for NO<sub>x</sub> under the FCAA, §182(f), as specified in §126.150(b), the NNSR rules apply to sources of VOC, but not to sources of NO<sub>x</sub>. For those counties which are designated nonattainment for ozone, but have been granted a temporary exemption for NO<sub>x</sub> under the FCAA, §182(f), the NNSR rules apply to sources of VOC and requirements for NO<sub>x</sub> are specified in §126.150(c). NO<sub>x</sub> sources granted the temporary exemption and authorized under 30 TAC §106.4, concerning requirements for Exemption from Permitting, shall require registration for increases in NO<sub>x</sub> over the major source/major modification level listed in Table I.

<sup>4</sup>The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO<sub>x</sub> = oxides of nitrogen

CO = carbon monoxide

SO<sub>2</sub> = sulfur dioxide

PM<sub>10</sub> = particulate matter of less than or equal to ten microns in diameter

**Necessary preconstruction approvals or permits** - Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable SIP.

**Net emissions increase** - The amount by which the sum of the following exceeds zero: the total increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases.

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

(i) it occurs during the contemporaneous period; and

(ii) the executive director has not relied on it in issuing a nonattainment permit for the source (under regulations approved during which the permit is in effect) when the increase in actual emissions from the particular change occurs.

(B) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

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

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

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

(iii) the reviewing authority has not relied on it in issuing a Prevention of Significant Deterioration or a nonattainment permit, or the state has not relied on it in demonstrating attainment or reasonable further progress; and

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

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

(E) At major sources with the potential to emit 250 tpy or more of a nonattainment pollutant:

(i) increases and decreases of such pollutant resulting from authorizations or applications received before November 15, 1992, are creditable to the extent that the increases or decreases occur within the period five years prior to the date construction on a particular change commences and meet all other creditability criteria; and

(ii) increases and decreases of such pollutant, resulting from authorizations or applications received on or after November 15, 1992, are creditable indefinitely to the extent that all other creditability criteria are met.

(F) For all major sources of  $\text{NO}_x$  in ozone nonattainment areas, increases and decreases of  $\text{NO}_x$  are creditable only if they resulted from authorizations or applications received on or after November 15, 1992.

**Offset ratio** - For the purpose of satisfying the emissions offset reduction requirements of the FCAA, §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total allowable emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification.

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

**Secondary emissions** - Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

**Stationary source** - Any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA.

**§126.11. Compliance History Definitions.**

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), 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) a criminal conviction of the applicant in any court for violation of any law of this state, another state, or of the United States governing air contaminants;

(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) the applicant's past performance or compliance with the laws and rules of this state, another state, or of the United States governing air contaminants; or

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

(C) an order of any court or administrative agency, whether final or not, respecting air contaminants for the facility that is the subject of the permit application.

**Compliance event** - An adjudicated decision or compliance proceeding as defined in this section.

**Compliance history** - The record of an applicant's adherence to air pollution control laws and rules of the State of Texas, other states, and of the United States except as provided in §116.123 of this title (relating to Effective Dates), the history shall be for the five-year period prior to the date on which the application for issuance, amendment, or renewal is filed. The compliance history shall include all compliance events, as defined in this section.

**Compliance proceeding** - A notice of violation issued by the commission or other agency for which the commission has recommended formal enforcement action and has notified the applicant of such recommendation.

**Existing site** - A plant property that is not a new site.

**New site** - A plant property having an operating history less than five years in length as of the date of application.

**§126.12. Section 112(g) Definitions.**

The following words and terms, when used in Subchapter K of Chapter 126 of this title (relating to Hazardous Air Pollutants Regulations Governing Constructed or Reconstructed Major Sources (§112(g))), shall have the following meanings, unless the context clearly indicates otherwise.

**Affected source** - The stationary source or group of stationary sources which, when fabricated (on-site), erected, or installed meets the definition of “construct a major source” or the definition of “reconstruct a major source.”

**Construct a major source** -

(A) To fabricate, erect, or install at any green field site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit ten tons per year of any hazardous air pollutant (HAP) or 25 tons per year of any combination of HAPs.

(B) To fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit ten tons per year of any HAP or

25 tons per year of any combination of HAPs, unless the process or production unit satisfies clauses (i)-(vi) of this subparagraph:

(i) all HAPs emitted by the process or production unit that would otherwise be controlled under the requirements of Subchapter K of Chapter 126 of this title will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(ii) either of the following regarding control of HAP emissions:

(I) the executive director has determined within a period of five years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR Part 51 or 52, toxics-best available control technology (T-BACT), or maximum achievable control technology (MACT) based on state air toxic rules for the category of pollutants which includes those HAPs to be emitted by the process or production unit; or

(II) The executive director determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or state air toxic rule MACT determination);

(iii) the executive director determines that the percent control efficiency for emissions of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(iv) the executive director has provided notice and an opportunity for public comment concerning its determination that criteria in clauses (i)-(iii) of this subparagraph apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or state air toxic rule MACT determination;

(v) if any commenter has asserted that a prior LAER, BACT, T-BACT, or state air toxic rule MACT determination is no longer adequate, the executive director has determined that the level of control required by that prior determination remains adequate; and

(vi) any emission limitations, work practice requirements, or other terms and conditions upon which the determinations in clauses (i)-(v) of this subparagraph by the executive director are predicated will be construed by the executive director as applicable requirements under the FCAA, §504(a) and either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.

**Control technology** - Measures, processes, methods, systems, or techniques to limit the emission of HAPs including, but not limited to, measures that:

(A) reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;

(B) enclose systems or processes to eliminate emissions;

(C) collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 United States Code 7412(h); or

(E) are a combination of subparagraphs (A)-(D) of this definition.

**Electric utility steam generating unit** - Any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

**Greenfield site** - A contiguous area under common control that is an undeveloped site.

**HAP** - Any air pollutant listed pursuant to the FCAA, §112(b).

**List of source categories** - The Source Category List required by the FCAA, §112(c).

**MACT emission limitation for new sources** - The emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the executive director, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

**Process or production unit** - Any collection of structures and/or equipment, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

**Reconstruct a major source** - The replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit ten tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(A) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(B) it is technically and economically feasible for the reconstructed major source to meet the applicable MACT emission limitation for new sources established under Subchapter K of Chapter 126 of this title.

**Research and development activities** - Activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a *de minimis* manner.

**Similar source** - A stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

The 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**

### **APPLICATION AND REQUIREMENTS**

#### **§§126.109-126.113**

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

#### **§126.109. Purpose and Scope.**

This chapter sets forth the federal requirements for the construction of any new facility or the modification of any existing facility which may emit air contaminants into the air of the state. In addition to the federal requirements in this chapter, a person constructing a new facility or engaging in the modification of any existing facility must also comply with the state-only requirements in Chapter 116 of this title (relating to State-only Requirements for the Control of Air Pollution by Permits for New Construction or Modification) for permits and/or Chapter 106 of this title (relating to Exemptions from Permitting) for exemptions. Where appropriate, 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 116 of this title.

**§126.110. Applicability.**

(a) Authorization 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 comply with any applicable requirements in §126.111 of this title relating to Federal New Source Review Requirements).

(b) Change in ownership.

(1) The new owner of a facility which previously has received a permit or special permit from the commission 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 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) Submittal under seal of licensed professional engineer. All applications 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 Board of Professional Engineers.

(d) Responsibility to obtain a permit. The owner or operator of a new facility or a proposed modification to an existing facility is responsible for obtaining a permit as required by §126.112 of this title (relating to General Application), if applicable.

(1) A permit application is not required to be submitted if the facility is subject only to the requirements of §126.111(1) of this title (relating to Federal New Source Review Requirements).

(2) A permit application is required if the proposed facility or modification is subject to nonattainment, Prevention of Significant Deterioration, or §112(g) review contained in Subchapters D, E, and K of this chapter (relating to Nonattainment Review; Prevention of Significant Deterioration Review; and Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))).

(3) The proposed new facility or modification to an existing facility must meet all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and Federal Minor New Source Review requirements.

**§126.111. Federal New Source Review Requirements.**

To be authorized for construction of a new facility or a modification of an existing facility, a person subject to §126.110 of this title (relating to Applicability) shall comply with the following requirements where applicable as determined by the applicability provisions of each regulation.

(1) Federal Minor New Source Review Requirements. The emissions from the facility or proposed facility shall meet the requirements, if applicable, in the regulations listed in subparagraphs (A)-(G) of this paragraph.

(A) The following requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter):

(i) §111.111(c)(1) and (2) of this title (relating to Requirements for Specified Sources);

(ii) §111.141 of this title (relating to Geographic Areas of Application and Date of Compliance), but only as it applies to El Paso and the Fort Bliss Military Reservation;

(iii) §111.143 of this title (relating to Materials Handling), but only as it applies to El Paso and the Fort Bliss Military Reservation;

(iv) §111.145 of this title (relating to Construction and Demolition), but only as it applies to El Paso and the Fort Bliss Military Reservation;

(v) §111.147 of this title (relating to Roads, Streets, and Alleys), but only as it applies to El Paso and the Fort Bliss Military Reservation; and

(vi) §111.149 of this title (relating to Parking Lots), but only as it applies to El Paso and the Fort Bliss Military Reservation.

(B) The following requirements of Chapter 112 of this title (relating to Sulfur Compounds):

(i) §112.1 of this title (relating to Definitions);

(ii) §112.2 of this title (relating to Compliance, Reporting, and Recordkeeping); and

(iii) §§112.5-112.9 of this title (relating to Allowable Emission Rates - Sulfuric Acid Plant Burning Elemental Sulfur; Allowable Emission Rates - Sulfuric Acid Plant;

Allowable Emission Rates - Sulfur Recovery Plant; Allowable Emission Rates From Solid Fossil Fuel-Fired Steam Generators; and Allowable Emission Rates - Combustion of Liquid Fuel);

(iv) §112.14 of this title (relating to Allowable Emission Rates - Nonferrous Smelter Processes);

(v) §112.15 of this title (relating to Temporary Fuel Shortage Plan Filing Requirements);

(vi) §112.16 of this title (relating to Temporary Fuel Shortage Plan Operating Requirements);

(vii) §112.17 of this title (relating to Temporary Fuel Shortage Plan Notification Procedures);

(viii) §112.18 of this title (relating to Temporary Fuel Shortage Plan Reporting Requirements);

(ix) §112.41(b) of this title (relating to Allowable Emissions);

(x) §112.43(b) and (c) of this title (relating to Calculation Methods);

(xi) §112.45 of this title (relating to Inspection and Recordkeeping Requirements);

(xii) §112.47 of this title (relating to Compliance Schedules);

(xiii) §112.51 of this title (relating to Emissions Limits for TRS Compounds From Kraft Pulp Mills);

(xiv) §112.53 of this title (relating to Alternate Emission Limitations);

(xv) §112.55 of this title (relating to Inspection Requirements);

(xvi) §112.57 of this title (relating to Monitoring and Recordkeeping Requirements); and

(xvii) §112.59 of this title (relating to Compliance Schedules).

(C) All of the requirements of Subchapter B of Chapter 113 of this title (relating to Lead from Stationary Sources).

(D) All of the requirements of Chapter 115 of this title (relating to Control of Air Pollution for Volatile Organic Compounds).

(E) All of the requirements of Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds), except Subchapter D of Chapter 117 of this title (relating to Administrative Provisions).

(F) All of the requirements of Chapter 119 of this title (relating to Control of Air Pollution from Carbon Monoxide).

(G) Any revisions to Chapters 111, 112, 113, 115, 117, and 119 of this title, unless specifically identified in subsequent rulemaking as a state-only requirement, as defined by §122.10 of this title (relating to General Definitions).

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

(3) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR, Parts 61 or Maximum Achievable Control Technology standards as listed under 40 CFR Part 63, promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended.

(4) Nonattainment review. If the proposed facility or modification is located in a nonattainment area, it shall comply with all applicable requirements of Subchapter D of Chapter 126 of this title (relating to Nonattainment Review).

(5) Prevention of Significant Deterioration (PSD) review. If the proposed facility or modification is located in an attainment area, it shall comply with all applicable requirements of Subchapter E of Chapter 126 of this title (relating to Prevention of Significant Deterioration Review).

(6) 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))).

**§126.112. General Application.**

(a) Responsibility for permit application. It is the responsibility of any owner or operator of a new facility or proposed modification to an existing facility to submit a permit application. Any application for a new permit or modification to an existing permit must include a completed Form PI-1 General Application. Facilities subject to Subchapter K of Chapter 126 of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (§112(g))) must also submit any other information as required by the commission. 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 or modification to an existing permit, the owner or operator of the proposed facility shall submit information to the commission 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 and with the intent of the 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 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 "Sampling Procedures Manual."

(3) Best Available Control Technology (BACT). The proposed facility or modifications to an existing facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

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

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

(b) Voiding of deficient application. An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit modification are met in response to any deficiency notification issued by the executive director pursuant to the provisions of this section, or §126.131 of this title (relating to Public Notification Requirements). If an applicant fails to make such good faith effort, the executive director shall void the application and notify the applicant. If the application is resubmitted within six months of the voidance, it shall be exempt from the requirements of §126.163 of this title (relating to Prevention of Significant Deterioration Permit Fees).

**§126.113. General and Special Conditions.**

(a) Permits may contain general and special conditions. The holders of permits 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 §§126.150, 126.151, and 126.160-126.163 of this title (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) 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 modified after August 16, 1994, the following general conditions shall be applicable, but may not be specifically stated within the permit document.

(1) Voiding of permit. A permit or permit amendment under this chapter is automatically void if the holder fails to begin construction within 18 months of date of issuance, discontinues construction for more than 18 consecutive months prior to completion, or fails to complete construction within a reasonable time. Upon request, the executive director may grant a one-time 18-month extension of the date to begin construction.

(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 commission not later than 15 working days after occurrence of the event.

(3) Start-up notification. The appropriate 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 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's 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) Equivalency of methods. It shall be the responsibility of the 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 permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(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 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) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions listed in the table entitled "Emission Sources - Maximum Allowable Emission Rates" shall not exceed the values stated on the table attached to the permit.

(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).

(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 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, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) There may be additional special conditions attached to a permit upon issuance or modification of the permit. Such conditions in a permit may be more restrictive than the requirements of Title 30 of the Texas Administrative Code.

(d) All representations with regard to construction plans and operation procedures in an application for a permit, as well as any general and special conditions attached to the permit, become conditions upon which the subsequent permit, is issued.

(e) 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 modify the permit in that regard and such modification is approved by the executive director or the commission. Applications to modify a permit shall be submitted with a

completed Form PI-1 and are subject to the requirements of §126.112 of this title (relating to General Application).

(f) New facilities which are not major sources or changes to existing facilities which are considered to be minor modifications shall follow permitting procedures contained in Chapter 116 of this title (relating to State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification).

The 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**

**§§126.120-126.126**

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

**§126.120. Applicability.**

(a) Except as provided in §126.121 of this title (relating to Exemptions) as part of its construction permit review, or the review of a modification, or renewal of an existing permit, the commission shall compile the following information:

(1) for a new facility at an existing site or for a modification or renewal of an existing permit, the compliance history for the existing site;

(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 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 with a compliance history for similar facilities owned or operated by the applicant in other states.

**§126.121. Exemptions.**

The commission shall not be required to compile a compliance history where the total increased actual emissions of any specific contaminant (specific substance, e.g., benzene, 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, etc.) from the facility or site.

**§126.122. Contents of Compliance History.**

(a) The compliance history shall include a listing of all adjudicated decisions and compliance proceedings, as defined in §126.11 of this title (relating to Compliance History Definitions), involving the facility that is the subject of the permit application.

(b) If the applicant has no compliance history in the United States, the applicant shall provide the commission with a compliance history for any similar facilities owned or operated by:

(1) a person who is presently an officer, director, or agent of the applicant;

(2) a parent corporation, subsidiary, or predecessor in interest of the applicant;

(3) one who owns 20% or more of the applicant, whether directly, as a shareholder, partner, beneficiary, or otherwise; or

(4) one who controls the applicant or has the ability to direct the conduct of the applicant.

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

(1) for Texas facilities:

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

(i) the style of the case;

(ii) the tribunal issuing the conviction or judgment;

(iii) the docket number and the date of action; and

(iv) the general nature of the alleged violation;

(B) administrative enforcement orders identified by stating:

(i) the name or style of action;

(ii) the agency issuing the order;

(iii) the docket number and the date of the order; and

(iv) the general nature of the alleged violation;

(C) compliance proceedings identified by stating:

(i) the name or style of action; and

(ii) the general nature of the alleged violation;

(2) for United States facilities outside Texas:

(A) criminal convictions and civil judgments identified by stating:

(i) the style of the case;

(ii) the tribunal issuing the conviction or judgment;

(iii) the docket number and date of action; and

(iv) the general nature of the alleged violation;

(B) administrative enforcement orders identified by stating:

(i) the name or style of action;

(ii) the agency issuing the order;

(iii) the docket number and the date of the order; and

(iv) the general nature of the alleged violation;

(C) for notices of violation issued by the EPA:

(i) the name of the action;

(ii) the EPA identification number and date of notice; and

(iii) the general nature of the alleged violation.

(d) In compiling the applicant's compliance history pursuant to subsection (c) of this section, the commission 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 Environmental Protection Agency 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 administrative enforcement action and the commission classified those violations as not being subject to compliance history review; or

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

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

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

(e) The commission 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 request shall list specific compliance events requiring such an analysis.

**§126.123. Effective Dates.**

The requirements under §§126.120-126.126 of this title (relating to Compliance History) apply only to applications filed on or after December 9, 1992. For applications filed before June 1, 1993, neither the commission 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 nor the applicant is required to include compliance events occurring more than five years prior to the date on which the application is filed.

**§126.124. Public Notice of Compliance History.**

When public notice is required pursuant to §126.131 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."

**§126.125. Preservation of Existing Rights and Procedures.**

Nothing in this subchapter (relating to Compliance History) shall diminish the rights of any party in a contested case hearing to raise any issue authorized by 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. Nothing in this subchapter shall limit the authority of the commission 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.

**§126.126. Voidance of Permit Applications.**

If an applicant does not submit compliance history information within 180 days, upon written request, the commission 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.

The 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 : PUBLIC NOTIFICATION AND COMMENT**

**§§126.130-126.134, 126.136, 126.137**

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

**§126.130. Applicability.**

(a) Any person subject to the new source requirements in §126.111 of this title (relating to Federal New Source Review Requirements) shall comply with the public notification and, as appropriate, comment procedures of this subchapter.

(b) For those facilities subject to §126.111(1)-(3) of this title and not to §126.111(4)-(6) of this title, the owner or operator of any new facility to be modified shall notify the commission of such applicability within 21 days following the construction or commencement of operation of such new or modified facility. For sources not subject to Chapter 122 of this title (relating to Federal Operating Permits) but subject to Chapter 116 of this title (relating to State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification), this notice requirement may be satisfied

by providing notice in any permit application required under Chapter 116 of this title. For sources subject to Chapter 122 of this title, this notice requirement shall be satisfied by using the appropriate procedures set forth in Subchapter C of Chapter 122 of this title (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals).

(c) For those facilities subject to §126.111 (4)-(6) of this title for which a permit is required, 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 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. Any person who applies for a permit modification 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 under this chapter and Chapter 116 of this title.

(d) Upon written request by the owner or operator of a facility which previously has received a permit from the commission, 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.

**§126.131. Public Notification Requirements.**

(a) Notification by applicant. If the application is complete, for any permit subject to the FCAA, Title I Part C or D, to Title 40 Code of Federal Regulations (CFR), Part 51.165(b), or to Title 40 Code of Federal Regulations (CFR), Part 63, 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. Public notice shall include the information specified in §126.132 of this title (relating to Public Notice Format) and the applicant shall provide such notice using each of the methods specified in §126.132 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 §126.132 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 Austin office and at the appropriate commission regional office in the region where construction is proposed throughout the comment period established in the notice published pursuant to §126.132 of this title.

**§126.132. 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) permit application number;
- (2) company name;
- (3) type of facility;
- (4) description of the location of facility or proposed location of the facility;
- (5) contaminants to be emitted;
- (6) preliminary determination of the executive director to issue or not issue the permit;

(7) location and availability of copies of the completed permit application and the executive director's preliminary analyses;

(8) public comment period;

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

(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 rules; and

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

(b) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issue of the newspaper and shall contain the information specified in subsection (a)(1)-(4) of this section and note that additional information is contained in the notice published pursuant to subsection (a) of this section in the public notice section of the same issue.

(c) Additional alternate language public notice. The requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by the Education Code, §21.109, and 19 TAC §89.2(a) or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.2(g). Schools not governed by the provisions of 19 TAC §89.2 shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.

(1) The applicant shall publish an additional notice at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.2(a) under 19 TAC §89.2(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(2) Each notice under this subsection shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.

(4) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.

(5) Notice under this subsection shall only be required to be published within the United States.

(6) If the alternate language publication is published once a week or more frequently, notice shall be published in two successive issues. Otherwise, only one publication shall be required.

(7) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(8) Each alternate language publication shall follow the requirements of subsections (a) and (b) of this section not otherwise inconsistent with this subsection.

(d) Exemptions from alternate language notification. Elementary or middle schools that offer English as a second language under 19 TAC §89.2(d), and are not otherwise affected by 19 TAC §89.2(a), will not trigger the requirements of subsection (c) of this section.

**§126.133. 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 may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements.

(1) Signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches.

(2) Signs shall be headed by the words "PROPOSED AIR QUALITY PERMIT" in no less than two-inch bold face block printed capital lettering.

(3) Signs shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch bold-face block printed capital lettering (more than one number may be included on the signs if the respective public comment periods coincide).

(4) Signs shall include the words "for further information contact" in no less than 1/2-inch lettering.

(5) Signs shall include the words "Texas Natural Resource Conservation Commission," and the address of the appropriate TNRCC regional office in no less than one-inch bold-face capital lettering and 3/4-inch bold-face lower case lettering.

(6) Signs shall include the phone number of the appropriate commission office in no less than two-inch bold-face numbers.

(b) The sign or signs must be in place by the date of publication of the newspaper notice required by §126.132 of this title (relating to Public Notice Format) and must remain in place and legible throughout the period of public comment provided for in §126.136(a) of this title (relating to Public Comment Procedures).

(c) Each sign placed at the site must be located within ten 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 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 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 are at least as effective in providing notice to the public. The approval from the commission under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) These sign requirements do not apply to properties under the same ownership which are noncontiguous and/or separated by intervening public thoroughfares, unless directly involved by the permit application.

(f) Alternate language sign posting. The requirements of this subsection are applicable whenever either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Education Code, §21.109, and 19 TAC §89.2(a) or if either school has waived out of such a required bilingual program under the provisions of 19 TAC §89.2(g). Schools not governed by the provisions of 19 TAC §89.2 shall not be considered in determining applicability of the requirements of this subsection. Each affected facility shall meet the following requirements.

(1) The applicant shall post an additional sign in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school has waived out of the requirements of 19 TAC §89.2(a) under 19 TAC §89.2(g), the alternate language signs shall be posted in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(2) The alternate language signs shall be posted adjacent to each English language sign required in this section.

(3) The alternate language sign posting requirements of this subsection shall be satisfied without regard to whether alternate language notice is required under §126.132(c) of this title.

(4) The alternate language signs shall meet all other requirements of this section.

(g) Exemption from alternate language sign posting. Elementary or middle schools that offer English as a second language under 19 TAC §89.2(d), and are not otherwise affected by 19 TAC §89.2(a), will not trigger the requirements of subsection (f) of this section.

**§126.134. Notification of Affected Agencies.**

When newspaper notices are published in accordance with §126.132 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 in Austin; the EPA 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, the permit applicant shall certify that the signs required by §126.133 of this title (relating to Sign Posting Requirements) have been posted in accordance with the provision of that section.

**§126.136. Public Comment Procedures.**

(a) Comment period. Interested persons may submit written comments, including requests for public hearings pursuant to the TCAA, §382.056, on the permit application and on the executive director's preliminary analysis. The public comment and timely hearing requests shall be processed under Subchapter B of Chapter 55 of this title (relating to Hearing Requests, Public Comment).

(b) Consideration of comments. All written comments received by the executive director during the period specified in subsection (a) of this section shall be considered in determining whether to issue or not to issue the permit. The executive director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the commission and appropriate regional office.

**§126.137. Notification of Final Action by the Commission.**

Persons submitting written comments in accordance with §126.136(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 §126.136(a) of this title will be notified of the executive director's final decision at the same time that the applicant is notified.

The 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 : NONATTAINMENT REVIEW**

### **§126.150, §126.151**

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

#### **§126.150. New Major Source or Major Modification in Ozone Nonattainment Area.**

(a) The owner or operator of a proposed new facility which is a major stationary source of volatile organic compound (VOC) emissions or nitrogen oxides (NO<sub>x</sub>) emissions, or which is a facility that will undergo a major modification with respect to VOC or NO<sub>x</sub> emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the FCAA, §107 shall meet the additional requirements of paragraphs (1)-(4) of this subsection, except as provided for in subsections (b) and (c) of this section. Table I of §126.10 of this title (relating to Nonattainment Review Definitions) specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major or modification for those classifications. The *de minimis* threshold test shall be required for proposed VOC emissions increases that equal or exceed five tons per year in moderate, serious, and severe ozone nonattainment areas, and for NO<sub>x</sub> emissions

increases that equal or exceed 40 tons per year in moderate, serious, and severe ozone nonattainment areas. In applying the *de minimis* threshold test, if the net emissions increases aggregated over the contemporaneous period are greater than the major modification levels stated in Table I, the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emissions rate (LAER) as defined in §126.10 of this title for the nonattaining pollutant for which the facility is a new major source or major modification. LAER shall be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §126.10 of this title and shown in Table I.

(4) In accordance with the FCAA, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(b) For sources located in the Dallas/Fort Worth ozone nonattainment area (Collin, Dallas, Denton, and Tarrant Counties) or the El Paso ozone nonattainment area (El Paso County), the requirements of this section do not apply to NO<sub>x</sub> emissions.

(c) For sources located in the Houston/Galveston (HGA) ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) or the Beaumont/Port Arthur (BPA) ozone nonattainment area (Hardin, Jefferson, and Orange Counties), the following shall apply to NO<sub>x</sub> emissions.

(1) For permit applications in review after April 12, 1995, and declared administratively complete on or before December 31, 1997, the following shall apply.

(A) subsection (a)(1), (2), and (4) of this section do not apply.

(B) The requirements of subsection (a)(3) of this section apply and shall be made a part of the source's permit. However, the requirements shall be held in abeyance for a period ending no sooner than January 1, 1998. The commission may, on or after January 1, 1998, and after

making the determinations described in paragraph (2) of this subsection, require the source to implement the permit requirements imposed pursuant to the requirements of subsection (a)(3) of this section. If the commission requires implementation, the source shall obtain the NO<sub>x</sub> offsets as specified in subsection (a)(3) of this section no later than January 1, 2000.

(C) Documentation of proposed increases of NO<sub>x</sub> equal to or greater than 40 tons per year, as well as documentation of netting calculations for these increases, shall be submitted.

(D) A source otherwise subject to the requirements of subsection (a)(1)-(4) of this section may, at its option, comply with any of those requirements.

(2) The commission will review, during the years 1996 and 1997, the results of the Urban Airshed Model for the HGA and BPA ozone nonattainment areas, using data from the Coastal Oxidant Assessment for Southeast Texas study, in accordance with the EPA document "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)" (December 1993). If the commission determines that additional NO<sub>x</sub> reductions in the nonattainment area would contribute to attainment of the National Ambient Air Quality Standards for ozone in that nonattainment area, the commission will notify sources which have permit requirements in abeyance pursuant to paragraph (1)(B) of this subsection, that the period of abeyance shall end. The source shall obtain the NO<sub>x</sub> offsets as specified in subsection (a)(3) of this section no later than January 1, 2000. On or after January 1, 1998, the commission, pursuant to a formal rulemaking proceeding, may require sources in

the HGA and BPA nonattainment areas who file an application after January 1, 1998, to comply with the requirements of subsection (a)(1) - (4) of this section.

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

The owner or operator of a proposed facility in a designated nonattainment area for an air contaminant other than ozone, which will be a new major stationary source or a major modification for that nonattainment air contaminant, must meet the additional requirements of paragraphs (1)-(4) of this section regardless of the degree of impact of its emissions on ambient air quality. Table I of §126.10 of this title (relating to Nonattainment Review Definitions), specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §126.10 of this title for the nonattaining pollutants for which the facility is a new major source or major modification. LAER shall be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in

compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities shall be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §126.10 of this title and shown in Table I.

(4) In accordance with the FCAA, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

The 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 : PREVENTION OF SIGNIFICANT DETERIORATION REVIEW**

### **§§126.160-126.163**

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

#### **§126.160. Prevention of Significant Deterioration Requirements.**

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by EPA in Title 40 Code of Federal Regulations (CFR) in 40 CFR 52.21 as amended June 3, 1993 (effective June 3, 1994) and the Definitions for Protection of Visibility promulgated in 40 CFR 51.301, hereby incorporated by reference.

(b) The following paragraphs are excluded:

- (1) 40 CFR 52.21(j), concerning control technology review;

(2) 40 CFR 52.21(l), concerning air quality models;

(3) 40 CFR 52.21(q), concerning public notification (provided, however, that a determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application so long as a contested case hearing has not been called on the application);

(4) 40 CFR 52.21(r)(2), concerning source obligation;

(5) 40 CFR 52.21(s), concerning environmental impact statements;

(6) 40 CFR 52.21(u), concerning delegation of authority; and

(7) 40 CFR 52.21(w), concerning permit rescission.

(c) The term "executive director" shall replace the word "administrator," except in 40 CFR 52.21(b)(17), (f)(1)(v), (f)(3), (f)(4)(i), (g), and (t). "Administrator or executive director" shall replace "administrator" in 40 CFR 52.21(b)(3)(iii), and "administrator and executive director" shall replace "administrator" in 40 CFR 52.21(p)(2).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by EPA for use in the

state program, and other specific provisions made in the PSD State Implementation Plan. If the air quality impact model approved by EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

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

The commission may not issue a permit to any new major stationary source or major modification located in an area designated as attainment or unclassifiable, for any National Ambient Air Quality Standard (NAAQS) pursuant to the FCAA, §107, if ambient air impacts from the proposed source would cause or contribute to a violation of any NAAQS. In order to obtain a permit, the source must reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to eliminate the predicted exceedances of the NAAQS. A major source or major modification will be considered to cause or contribute to a violation of an NAAQS when the emissions from such source or modification would, at a minimum, exceed the *de minimis* impact levels specified in §101.1 of this title (relating to Definitions) at any locality that is designated as nonattainment or is predicted to be nonattainment for the applicable standard.

**§126.162. Evaluation of Air Quality Impacts.**

In evaluating air quality impacts under §126.160 of this title (relating to Prevention of Significant Deterioration Requirements) or §126.161 of this title (relating to Sources Located in an Attainment Area with a Greater than *De Minimis* Impact), the owner or operator of a proposed new facility or modification of an existing facility shall not take credit for reductions in impact due to dispersion techniques as defined in Title 40 Code of Federal Regulations (CFR). The relevant federal regulations are incorporated herein by reference, as follows:

(1) 40 CFR 51.100(hh)-(kk) promulgated November 7, 1986;

(2) the definitions of owner or operator, emission limitation and emission standards, stack, a stack in existence, and reconstruction, as given under 40 CFR 51.100(f), (z), (ff), (gg), and 40 CFR 60, respectively;

(3) 40 CFR 51.118(a), (b), and (c); and

(4) 40 CFR 51.164.

**§126.163. Prevention of Significant Deterioration Permit Fees.**

(a) 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 for which an application is

submitted after January 1, 1987, and the federal regulations for Prevention of Significant Deterioration (PSD) are applicable, the fee is \$1,500.

(b) If the estimated capital cost of the project is \$300,000 or more and the PSD regulations are applicable, the fee is 0.5% of the estimated capital cost of the project. The maximum fee is \$75,000.

(c) Whenever a permit application is submitted under PSD requirements, there shall be no additional fee for the state new source review permit application.

(d) If the estimated capital cost of the project is less than \$50 million, the permit applicant shall include a certification that the estimated capital cost of the project is correct. Certification of the estimated capital cost of the project may be spot-checked and evaluated for reasonableness during permit processing. The reasonableness of project capital cost estimates used as a basis for permit fees shall be determined by the extent to which such estimates include fair and reasonable estimates of the capital value of the direct and indirect costs listed as follows.

(1) Direct costs are as follows:

(A) process and control equipment not previously owned by the applicant and permitted in Texas;

(B) auxiliary equipment, including exhaust hoods, ducting, fans, pumps, piping, conveyors, stacks, storage tanks, waste-disposal facilities, and air pollution control equipment specifically needed to meet permit and regulation requirements;

(C) freight charges;

(D) site preparation (including demolition), construction of fences, outdoor lighting, road, and parking areas;

(E) installation (including foundations), erection of supporting structures, enclosures or weather protection, insulation and painting, utilities and connections, process integration, and process control equipment;

(F) auxiliary buildings, including materials storage, employee facilities, and changes to existing structures;

(G) ambient air monitoring network.

(2) Indirect costs are as follows:

(A) final engineering design and supervision and administrative overhead;

(B) construction expense (including construction liaison), securing local building permits, insurance, temporary construction facilities, and construction clean-up;

(C) contractor's fee and overhead.

(e) A fee of \$75,000 shall be required if no estimate of capital project cost is included with a permit application.

The 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 : EMISSION REDUCTIONS: OFFSETS**

**§§126.170-126.172**

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

**§126.170. Applicability for Reduction Credits.**

At the time of application for a permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the executive director to use such emission reductions to offset emissions expected from the facility for which the permit is sought, provided that the following conditions are met.

(1) The emission reductions are not required by any provision of the Texas State Implementation Plan as promulgated by the EPA in 40 Code of Federal Regulations, Part 52, Subpart SS, nor by any other federal regulation under the FCAA, as amended, such as New Source Performance Standards. Minimum offset ratios as specified in Table I of §126.10 of this title (relating to Nonattainment Review Definitions) shall be used in areas designated as nonattainment areas.

(2) The applicant furnished documentation at the time of his permit application to substantiate his claim of emission reductions previously effected. The following information must be included in the documentation:

(A) location and identity of the source(s) where emissions are reduced;

(B) chemical composition of emissions reduced;

(C) date(s) when emission reductions occurred;

(D) amount of emission reductions expressed in rates of tons per year and in pounds per hour;

(E) a complete description of the reduction method (i.e., source shut-down, process or operational change, type of control device, etc.);

(F) a certification by the applicant that the emission reductions have in fact been achieved and that the same reductions have not been used previously and will not be used subsequently to offset another source; and

(G) any other pertinent detailed descriptive information that may be requested by the executive director.

(3) Emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source, shall be allowed to be offset by alternative or innovative means, provided the following conditions are met:

(A) any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source permitted to test such engines as of November 15, 1990;

(B) the source demonstrates to the satisfaction of the commission that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source;

(C) the source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency that the testing of rocket motors or engines at the facility is required for a program essential to the national security; and

(D) the source will comply with an alternative measure, imposed by the commission, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the commission may impose an emissions

fee to be paid which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

**§126.171. Determination by Executive Director to Authorize Reductions.**

The executive director may grant authority to a permit applicant to use prior emission reductions and emission reductions granted to the applicant by another entity (either public or private) in accordance with §126.170 of this title (relating to Applicability for Reduction Credits) if the commission determines that the prior emission reductions have, in fact occurred, and when considered with other emission reductions that may be required by the permit as well as contaminants that will be emitted by the new source, will result in compliance with §§126.150, 126.151, 126.160, and 126.162 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area; New Major Source or Major Modification in Nonattainment Area Other than Ozone; Prevention of Significant Deterioration Requirements; and Evaluation of Air Quality Impacts), as applicable, in the area where the new source is to be located. Prior as well as future emission reductions to be used as an offset shall be made conditions for granting authority to construct the proposed new source and shall be enforced.

**§126.172. Recordkeeping.**

The executive director will maintain no records of emission offset credits claimed by an applicant in accordance with §126.170 of this title (relating to Applicability for Reduction Credits) other than those contained in permit application and permit files. The applicant shall maintain all records necessary to substantiate claims of emission reductions and shall make such records available for inspection upon request of the executive director.

The 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 G : PERMIT RENEWALS**

### **§§126.310-126.314**

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

#### **§126.310. Notification of Permit Holder.**

The commission shall provide written notice to the holder of a Prevention of Significant Deterioration or nonattainment permit, issued or renewed on or after July 24, 1992, that the permit is scheduled for review. The commission shall also provide written notice to the holder of a §112(g) permit, issued or renewed on or after June 29, 1998, 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 no later than 90 days before expiration of the permit.

Pursuant to Texas Civil Statutes, Article 9027, the commission 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, 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.

**§126.311. 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) the facility is being operated in accordance with all requirements and conditions of the existing permit, including representations in the application for permit to construct and subsequent amendments, and any previously granted renewal;

(2) the facility meets the requirements of any applicable New Source Performance Standards promulgated by the EPA under the authority of the FCAA, §111, as amended; and

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

(b) In addition to the requirements in subsection (a) of this section, if the commission 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) the applicant may be required to submit additional information regarding the emissions from the facility and their impacts on the surrounding area; and

(2) the commission 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 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 §§126.120-126.126 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, 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 fails to submit an application for review and renewal within 90 days prior to expiration of the permit, pursuant to §126.310 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 review every ten years after the date of issuance or renewal.

**§126.312. 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 is sent to acknowledge receipt of the application and the applicant is then required to provide public notice of the application for permit renewal according to §126.132 and §126.133 of this title (relating to Public Notice Format and Sign Posting Requirements). All requirements pertaining to signs and public notification in §126.132 and §126.133 of this title and §126.134 of this title (relating to Notification of Affected Agencies) and to public comments in §126.136 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 §126.133(a)(2) of this title shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT." When newspaper notices are published in accordance with §126.132 of this title, the applicant for permit renewal shall furnish a copy of such notices and dates of publication to the commission 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, the applicant shall certify that the signs required by §126.133 of this title have been posted in accordance with the provisions of that paragraph. Public notice for renewal under this chapter may be combined with public notice for renewal under Chapter 116 of this title (relating to State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification).

**§126.313. Renewal Application Fees.**

(a) The holder of a permit to be reviewed for renewal by the commission shall remit a fee with each renewal application, pursuant to the TCAA, §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\***

<b>X = TOTAL ALLOWABLE (TONS/YEAR)</b>	<b>BASE FEE</b>	<b>INCREMENTAL FEE</b>
X ≤ 5	\$300	--
5 < X ≤ 24	\$300	\$35/ton
24 < X ≤ 99	\$965	\$25/ton
99 < X ≤ 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 in response to written notice from the commission consistent with §126.310 of this title (relating to Notification of Permit Holder). No fee will be accepted before the permit holder has been notified by the commission 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 Subchapter E of Chapter 126 of this title (relating to Prevention of Significant Deterioration Review) and Chapter 116 of this title (relating to State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification).

**§126.314. Review Schedule.**

(a) Renewal of permit. Subsequent to review, the executive director shall renew a permit if it is determined that the facility meets the requirements of §126.311 and §126.312 of this title (relating to Permit Renewal Applications and 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 §126.311(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 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 or the terms of the existing permit pursuant to §126.311(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 requirements for corrective action by the deadline specified in the commission 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, Chapter 1 of this title (relating to Purpose of Rules, General Provisions), Chapter 55 of this title (relating to Request for Contested Case Hearings), and Chapter 80 of this title (relating to Contested Case Hearings).

(c) Effective date of existing permit. An existing permit shall remain effective until it is renewed, or until the deadline specified in the executive director's report to the permit holder, or until a date specified in any commission order entered following a contested case hearing held pursuant to

subsection (b) of this section. An existing permit shall remain in effect during the course of a contested case hearing if the hearing proceeds beyond the permit expiration as identified in §126.311(d) of this title.

The 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 H : EMERGENCY ORDERS**

### **§§126.410-126.419**

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

#### **§126.410. 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. For purposes of this subchapter, 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.

**§126.411. 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) a statement that the proposed construction and emissions 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 necessitated by a catastrophic event;
- (2) a description of the catastrophic event;
- (3) a statement that there are no practicable alternatives to the proposed construction and emissions;
- (4) a statement that the emissions will not cause or contribute to a condition of air pollution;
- (5) a statement that the proposed construction and emissions will occur only at the property where the catastrophic event occurred or on other property owned by the owner or operator of the damaged facility, which produces the same intermediates, products, or by-products, providing that

no more than a *de minimis* increase will occur in the predicted concentration of the air contaminants at or beyond the property line at such other property;

(6) a description of the proposed construction and the type and quantity of air contaminants to be emitted;

(7) an estimate of the dates on which the proposed construction and emissions will begin and end;

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

(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.

**§126.412. Public Notification.**

The commission 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 shall publish notice of any hearing in the *Texas Register* not later than

the tenth 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*.

**§126.413. 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 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 shall affirm, modify, or set aside the order as issued. Any hearing on an emergency order shall be conducted by the commission in accordance with provisions of the APA, §10.8 of this title (relating to Evidentiary Hearing Held by Commission) and Chapter 80 of this title (relating to Contested Case Hearings).

**§126.414. Affirmation of an Emergency Order.**

The commission shall affirm a proposed or issued order if the applicant shows at the hearing, by a preponderance of the evidence, that:

(1) the proposed construction and emissions 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) there are no practicable alternatives to the proposed construction and emissions;

(3) the emissions will not cause or contribute to a condition of air pollution;

(4) the proposed construction or emissions will occur only:

(A) at property where the catastrophic event occurred; or

(B) at other property owned by the owner or operator of the damaged facility which produces the same intermediates, products, or by-products, so long as there will be no more than a *de minimis* increase in the predicted concentration of the air contaminants at or beyond the property line at such other property;

(5) the time limits in the order for the beginning and completion of the proposed construction and emissions are reasonable; and

(6) the schedule in the order for submission of a complete permit application is reasonable.

**§126.415. Contents of an Emergency Order.**

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

- (1) a description of the emergency construction and emissions to be authorized;
- (2) reasonable time limits for the beginning and the completion of the proposed construction and emissions;
- (3) authorization for action only at the property where the catastrophic event occurred or on other property owned by the owner or operator of the damaged facility, which also produces the same intermediates, products, or byproducts, provided there will be no more than a *de minimis* increase in the concentration of air contaminants at or beyond the property line at such other property; and
- (4) a schedule for submission of a complete construction permit application under provisions of the TCAA, §382.0518.

**§126.416. 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 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). 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 §126.163 of this title (relating to Prevention of Significant Deterioration Permit Fees). 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.

**§126.417. Modification of an Emergency Order.**

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

(1) construction and emissions otherwise precluded under the TCAA 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) there is no practicable alternative to such construction and emissions; and

(3) modification of certain terms of the proposed or issued order is necessary to make the order, construction, and/or emissions meet the requirements stated in §126.414 of this title (relating to Affirmation of an Emergency Order).

**§126.418. Setting Aside an Emergency Order.**

The commission shall set aside a proposed or issued order if the hearing record does not show, in accordance with §126.414 or §126.417 of this title (relating to Affirmation of an Emergency Order or Modification of an Emergency Order), that the order should be either affirmed or modified and adopted as modified.

**§126.419. Expiration of Emergency Order.**

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

The 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 I : POTENTIAL-TO-EMIT LIMITATIONS**

### **§126.510**

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

#### **§126.510. Potential-to-Emit Limitations.**

(a) The owner or operator of a facility without any other federally enforceable emission rate may limit the facility's potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable.

(b) All representations in any registration of emissions under this section with regard to emissions shall become conditions upon which the facility shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility

(d) The certified registrations of emissions and records demonstrating compliance with such registration shall be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the commission or any air pollution control agency having jurisdiction.

The 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 J : STANDARD PERMITS**

### **§§126.610, 126.611, 126.614, 126.615, 126.617**

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

#### **§126.610. Applicability.**

(a) Pursuant to the 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, the term “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;

(4) emissions from the proposed facility will meet the requirements of any applicable National Emission Standards for Hazardous Air Pollutants, as listed under 40 CFR, Part 61 and Maximum Achievable Control Technology standards listed under Part 63, promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended;

(5) the owner or operator of the facility shall register the proposed project in accordance with §126.611 of this title (relating to Registration Requirements).

(b) Any project, except those authorized under §126.617 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 of this title (relating to Applicability) rather than this subchapter.

(c) Persons may not circumvent by artificial limitations the requirements of §126.110 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))).

**§126.611. Registration Requirements.**

(a) Registration for a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the commission's 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) the basis of emission estimates;

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

(3) sufficient information as may be necessary to demonstrate that the project will comply with §126.610(b) of this title (relating to Applicability);

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

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

(6) a description of any equipment being installed.

(b) Construction may begin any time after receipt of written notification from the executive director that there are no objections or 45 days after receipt by the executive director of the registration, whichever occurs first, except where a different time period is specified for a particular standard permit.

(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. 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.

**§126.614. 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. No fees will be refunded.

**§126.615. 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 commission adopted under Texas Health and

Safety Code, Chapter 382, and with intent of the TCAA, including protection of health and property of the public.

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §126.110 of this title (relating to Applicability). If the facility remains eligible for a standard permit, the owner or operator of the facility shall notify the executive director of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of changes in representations must be received by the executive director no later than 30 days after the change.

(3) Standard permit in lieu of permit modification. All changes authorized by standard permit to a facility previously permitted pursuant to §126.110 of this title shall be administratively incorporated into that facility's permit at such time as the permit is modified or renewed.

(4) Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the Office of Air Quality and any other air pollution control

program having jurisdiction 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 standard 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. The standard permit holder shall 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 standard permit. Alternative methods must be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the standard permit.

(6) 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, 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.

(7) 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 Recordkeeping Requirements and Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements).

(8) 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 governs. 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.

**§126.617. 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) The emissions limitations of §106.261(3) or (4) and §106.262(3) of this title (relating to Facilities (Emission Limitations) and Facilities (Emission and Distance Limitations)), referenced in §126.610(a)(1) of this title (relating to Applicability) do not apply to this standard permit. This standard permit cannot be used if the registrant receives notification that in the opinion of the executive director there are significant health effects concerns resulting from an increase in emissions of any air contaminant other than those for which a National Ambient Air Quality Standard has been established, until those concerns are addressed by the registrant to the satisfaction of the executive director.

(2) The time period of 45 days in §126.611(b) of this title (relating to Registration Requirements) is modified to 30 days.

(3) Replacement projects are subject to the following.

(A) The replacement emissions control equipment or control technique must be at least as effective an air pollution control method as the emissions control equipment or control technique being replaced. Equipment installed under this section is subject to all applicable testing and recordkeeping requirements.

(B) The replacement of emissions control equipment or control technique under this section is not limited to the method of control currently in place. Any type of control equipment or control technique may be replaced with any other type of control equipment or control technique as long as all other requirements of this standard permit are met.

(C) If the replacement project does not result in an increase in emissions of any air contaminant, the owner or operator of the facility shall submit registration notice not later than 30 days after the operation of the replacement project begins. If the replacement project will result in an increase of any air contaminant, the registration time period requirements of paragraph (2) of this section are applicable.

(4) Installation of the control equipment or implementation of the control technique must not result in an increase in the facility's production capacity unless the capacity increase occurs solely as a result of the installation of control equipment or the implementation of control techniques on existing units. This paragraph is not intended to limit the owner or operator's ability to recover lost capacity caused by a derate resulting from the installation of control equipment or the implementation of a control technique.

(A) The owner or operator shall obtain or qualify for any necessary authorization pursuant to §126.110 and/or §116.110 of this title (relating to Applicability) prior to utilizing any production capacity increase from a pollution control project required by any governmental standard that:

(i) results in the exceedance of any emission limit in an existing permit, other authorization, or grandfathered baseline; or

(ii) results in an emissions increase which exceeds the emission reduction due to the installation of control equipment or implementation of control techniques.

(B) Any production capacity increase resulting from the voluntary installation of controls or the implementation of control techniques may not be utilized until the owner or operator obtains or qualifies for any necessary authorization pursuant to §126.110 and/or §116.110 of this title.

(5) Any emission increase of an air contaminant must occur solely as a result of the installation of control equipment or implementation of a control technique authorized by this section. Emissions increases associated with recovering a derate resulting from the installation of control equipment or the implementation of a control technique are not prohibited by this paragraph.

(6) Installation of emission control equipment or implementation of a control technique may not include the installation of a new production facility, reconstruction of a production facility as

defined in 40 Code of Federal Regulations (CFR), §60.15(b)(1) and (c), or complete replacement of an existing production facility.

(7) 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) The net emissions increase may not:

(i) considering the emission reductions that will result from the project, cause or contribute to a violation of any national ambient air quality standard;

(ii) cause or contribute to a violation of any Prevention of Significant Deterioration (PSD) increment; or

(iii) cause or contribute to a violation of any PSD visibility limitation.

(B) For purposes of this section, the term "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 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 FCAA, Parts C and D and regulations promulgated thereunder.

(8) 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 (7) 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 at 40 CFR, §60.14 (effective December 16, 1975), an increase that satisfies the requirements of paragraph (7) of this section also satisfies the requirements of 40 CFR, §60.14(e)(5).

The 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 K : HAZARDOUS AIR POLLUTANTS: REGULATIONS**

**GOVERNING CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (§112(g))**

**§§126.710-126.713**

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

**§126.710. Applicability.**

The requirements of this section apply to an owner or operator who constructs or reconstructs a major source of hazardous air pollutants (HAP) after June 29, 1998, the effective date of §112(g)(2)(B), and the effective date of a Title V permit program in the state or local jurisdiction in which the major source is (or would be) located *unless* the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to the FCAA, §112(d), (h), or (j) and incorporated in another subpart of Part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before the effective date of §112(g)(2)(B).

**§126.711. Exclusions.**

(a) The requirements of this subchapter do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list pursuant to FCAA, §112(c)(5).

(b) The requirements of this subchapter do not apply to stationary sources that are within a source category that has been deleted from the source category list pursuant to FCAA, §112(c)(9).

(c) The requirements of this subchapter do not apply to research and development activities, as defined in 40 Code of Federal Regulations, §63.41.

(d) Nothing in this subchapter shall prevent a state or local agency from imposing more stringent requirements than those contained in this subchapter.

**§126.712. Application.**

Consistent with the requirements of 40 Code of Federal Regulations, §63.43 (concerning maximum achievable control technology determinations for constructed and reconstructed major sources), the owner or operator of a new facility (major source) or the reconstruction of an existing facility (as defined in §126.12 of this title (relating to Section 112(g) Definitions) shall submit a permit application as described in §126.112 of this title (relating to General Application) for those sources

subject to an approved federal operating permit program under Chapter 122 of this title (relating to Federal Operating Permits).

**§126.713. Public Notice Requirements.**

If the proposed new facility or reconstructed facility is a major source for hazardous air pollutants, it shall comply with the public notice requirements contained in §126.130 of this title (relating to Applicability).

The 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.