

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §116.12, concerning Nonattainment Review Definitions, §116.150, concerning New Major Source or Major Modification in Ozone Nonattainment Area, and §116.151, concerning New Major Source or Major Modification in Nonattainment Area Other than Ozone.

EXPLANATION OF THE PROPOSED RULES

The Federal Clean Air Act (FCAA), §182(b)(1) and (f) specifies that required measures for volatile organic compounds (including reasonably available control technology (RACT) and nonattainment new source review (NNSR)) must also be applied for nitrogen oxides (NO_x), unless a demonstration is made that NO_x reductions would not contribute to attainment of the ozone standard. The FCAA, §182(f) allows the following federally required NO_x measures to be waived if the state demonstrates that NO_x reductions do not contribute to ozone attainment: RACT, NNSR, vehicle inspection/maintenance, and general and transportation conformity. On April 12, 1995, the United States Environmental Protection Agency (EPA) approved a temporary §182(f) exemption from these NO_x measures in Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA). EPA's approval was based on the state's preliminary demonstration, using Urban Airshed Model (UAM) modeling, that NO_x reductions in HGA and BPA would not lower ozone levels, and in fact could make them worse ("NO_x disbenefit"). The temporary exemption allowed more time to conduct UAM modeling, using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. These UAM results were judged critical in determining whether, and to what extent, NO_x reductions are needed to attain the ozone standard. The EPA specified that the temporary exemption would expire on December 31, 1996.

On May 23, 1997, the EPA approved a one-year extension of the §182(f) temporary exemption, which now expires on December 31, 1997. This additional year allows the UAM modeling, using COAST data, to accommodate improvements in the modeling process, and to allow the development of better substantiated control programs.

As a result of the original exemption and extension, the agency revised certain rules, including §116.150, to be consistent with the §182(f) waiver. In the Fall of 1997, the TNRCC staff completed a major modeling analysis of the airshed of the upper Texas Gulf Coast. This study indicated that NO_x reductions are a necessary step toward the area's attaining the federal air quality standard for ozone. Because of the modeling and the need to continue steady reductions of the pollutants that contribute to ozone smog, on November 24, 1997, the commission determined not to seek further federal §182(f) waivers from the NO_x reduction requirements of the 1990 FCAA for the HGA and BPA areas.

These amendments to Chapter 116 reinstate full NNSR, consisting of application of lowest achievable emission rate (LAER), compliance certification, offsets, and alternative site analysis. These NNSR requirements will be reflected in permits for new or modified sources which are major for NO_x in HGA and BPA, issued after the §182(f) exemption expires on December 31, 1997.

In addition, the rulemaking would implement certain aspects of EPA's New Source Review (NSR) reform package, which clarifies permitting requirements as a result of the 1990 FCAA. The proposed rulemaking includes two clarifications which were discussed in the Prevention of Significant

Deterioration and NNSR proposed rule published in the *Federal Register* on July 23, 1996. The federal rulemaking provides EPA's interpretation of §182(c)(6), (7), and (8) of the 1990 FCAA amendments, which allows that creditable internal offsets may be used in certain nonattainment areas to either: avoid NNSR at existing major sources that emit, or have the potential to emit, less than 100 tons per year (tpy) of an ozone precursor; or substitute Best Available Control Technology (BACT) for LAER at existing major sources that emit, or have the potential to emit, 100 tpy or more of an ozone precursor. The proposed revisions to §116.150(a)(1) and (3) incorporate language to allow these substitutions.

Second, the proposed rule interprets that the FCAA requires a preliminary step of determining whether there is an "increase in the net emissions" from the proposed modification for which NSR applicability is in question. Where there is a "project net" increase in emissions, the next step is to combine those "project net" increases with the contemporaneous increases and decreases to determine if NNSR is required. Section 116.150(a) is proposed to be revised to require an applicant to submit contemporaneous netting calculations (de minimis threshold test) where the project has an increase in emissions of greater than five tpy and there is a net project emissions increase.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of NO_x NNSR.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be reductions of NO_x, ozone, and other air pollutants. This rulemaking would affect new major stationary sources of NO_x or major modifications in the HGA and BPA areas as well as in areas that are nonattainment for pollutants other than ozone. The commission cannot estimate the cost per facility for compliance with the amendment due to wide variability of project costs. This amendment does add flexibility by allowing certain NNSR projects to substitute less costly BACT for LAER.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because, while meeting the definition of a “major environmental rule” as defined in the Code, it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these sections under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these amendments is to remove an existing waiver for NO_x new source review. If adopted, sources located in ozone nonattainment areas of the state will be subject to a review of their NO_x emissions and possibly new control measures. However, there is no restriction or taking of private real property

associated with these proposed amendments.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission'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, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. Adoption of these proposed amendments should result in reductions of ambient NO_x and ozone concentrations.

PUBLIC HEARING

A public hearing on this proposal will be held January 20, 1998, at 10:00 a.m. in Room 5108 of TNRCC 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 each

hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97182-116-AI. Comments must be received by 5:00 p.m., January 20, 1998. For further information or questions concerning this proposal, please contact Randy Hamilton, Air Policy and Regulations Division, (512) 239-1512.

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

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.017, 382.012, 382.051, and 382.054, which provide the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.012 and §382.051(d).

SUBCHAPTER A : DEFINITIONS

§116.12. Nonattainment Review Definitions.

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

Contemporaneous period - 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]; and

(ii) (No change.)

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

De minimis threshold test (netting) - 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.

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) - (F) (No change.)

(G) any change in ownership at a stationary source. Figure: 30 TAC §116.12, definition of Major modification, subparagraph (G)

TABLE I
MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS^[1]

POLLUTANT	MAJOR SOURCE	MAJOR MODIFICATION²	OFFSET RATIO
<u>designation¹</u> <u>[net increase]</u>	<u>tons/year</u>	<u>tons/year</u>	<u>minimum</u>
OZONE³			
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
CO			
I moderate	100	100	1.00 to 1 ⁴
II serious	50	50	1.00 to 1 ⁴
SO₂	100	40	1.00 to 1 ⁴
PM₁₀			
I moderate	100	15	1.00 to 1 ⁴
II serious	70	15	1.00 to 1 ⁴
NO_x	100	40	1.00 to 1 ⁴
Lead	100	0.6	1.00 to 1 ⁴

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

² 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_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area) and for other pollutants are equal to the major modification level listed in Table I.

³ VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. For those counties which are designated nonattainment for ozone, but have been granted a permanent exemption for NO_x under the FCAA, §182(f), as specified in §116.150(b) of this title, the NNSR rules apply to sources of VOC, but not to sources of NO_x. [For those counties which are designated nonattainment for ozone, but have been granted a temporary exemption for NO_x under the FCAA, §182(f), the NNSR rules apply to sources of VOC and requirements for NO_x are specified in §116.150(c) of this title. NO_x sources granted the temporary exemption and authorized under §116.211 of this title (relating to Standard Exemption List) shall require registration for increases in NO_x over the major source/major modification level listed in Table I.]

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

VOC = volatile organic compounds
NO_x = oxides of nitrogen
CO = carbon monoxide
SO₂ = sulfur dioxide
PM₁₀ = particulate matter of less than ten microns in diameter

Offset ratio - For the purpose of satisfying the emissions offset reduction requirements of the FCAA [Federal Clean Air Act], §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. Offsets must meet the creditability criteria established in §101.29 of this title (relating to Emissions Banking and Trading).

Project net - The sum of the following: the total proposed increase in emissions resulting from a physical change or change in the method of operation at a stationary source, minus any sourcewide creditable actual emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Increases and decreases must meet the creditability criteria listed under the “Net emissions increase” definition of this section.

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

Issued in Austin, Texas, on December 4, 1997.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

NONATTAINMENT REVIEW

The amendments are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.017, 382.012, 382.051, and 382.054, which provide the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments implement the Health and Safety Code, §382.012 and §382.051(d).

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

(a) This section applies to administratively complete applications submitted [received] on or after November 15, 1992 for new construction or modification of facilities located in any area designated as nonattainment for ozone in accordance with the FCAA, §107. [Applications filed before November 15, 1992, shall be reviewed using the procedures outlined in this chapter in effect on October 22, 1991.] The owner or operator of a proposed new or modified facility which will be a new [is a] major stationary source of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the owner or operator of an existing major stationary source of VOC or NO_x emissions that will undergo a major modification with respect to VOC or NO_x, shall meet the requirements of

paragraphs (1) - (4) of this subsection, except as provided in subsection (b) of this section [which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the Federal Clean Air Act (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 §116.12 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. Except as noted in subsection (b) of this section regarding NO_x, the de minimis threshold test (netting) shall be required for all modifications to existing major sources of VOC or NO_x, unless at least one of the following conditions are met: the proposed emissions increases associated with a project, without regard to decreases, is less than five tons per year of the individual nonattainment pollutant or, the project emissions increases coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tons per year. [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_x 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, then the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission [emissions] rate (LAER) as defined in §116.12 of this title [(relating to Nonattainment Review Definitions)] for the nonattainment pollutants [nonattaining pollutant] for which the facility is a new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tons per year of the applicable nonattainment pollutant. For these sources, Best Available Control Technology (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new emission [emissions] unit and to each existing emission [emissions] unit at which the [a] net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) (No change.)

(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 §116.12 of this title and shown in Table I of §116.12 of this title [(relating to Nonattainment Review Definitions)]. Internal offsets which are generated at the source and which otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources with a PTE of less than 100 tons per year of an applicable nonattainment pollutant are not required to undergo Nonattainment New Source Review

under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources with a PTE of greater than or equal to 100 tons per year of an applicable nonattainment pollutant can substitute BACT for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) (No change.)

(b) For sources located in the Dallas/Fort Worth ozone nonattainment area (Collin, Dallas, Denton, and Tarrant counties) or in the El Paso ozone nonattainment area (El Paso County), the requirements of this section do not apply to NO_x 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_x emissions.

(1) (No change.)

(2) The commission has reviewed [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 United States Environmental Protection Agency document "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)" (December 1993). The commission has determined [If the Commission determines] that additional NO_x reductions in the HGA and BPA nonattainment areas will [area would] contribute to attainment of the National Ambient Air Quality Standards for ozone. The commission [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 has ended [shall end]. The source shall obtain the NO_x 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.]

§116.151. New Major Source or Major Modification in Nonattainment Areas [Area] Other Than Ozone.

This section applies to administratively complete applications submitted [received] on or after November 15, 1992 for new construction or modification of facilities located in a designated nonattainment area for an air contaminant other than ozone. [Applications filed before November 15,

1992, shall be reviewed using the procedures outlined in this chapter in effect on October 22, 1991.]

The owner or operator of a proposed new or modified facility which will be a new major stationary source for that nonattainment air contaminant, or the owner or operator of an existing major stationary source that will undergo a major modification with respect to that nonattainment air contaminant, shall meet the additional requirements of paragraphs (1) - (4) of this section [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 §116.12 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 §116.12 of this title [(relating to Nonattainment Review Definitions)] for the nonattainment [nonattaining] pollutants for which the facility is a new major source or major modification. LAER shall be applied to each new emission [emissions] unit and to each existing emission [emissions] unit at which the [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 and [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 limits [limitations] and standards.

(3) At the time the new or modified facility or facilities commence operation, the emission [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 §116.12 of this title [(relating to Nonattainment Review Definitions)] and shown in Table I of §116.12 of this title.

(4) (No change.)

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

Issued in Austin, Texas, on December 4, 1997.