

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§116.10, 116.11, 116.13, 116.14, 116.110-116.112, 116.114-116.118, 116.120-116.126, and 116.310-116.314 and new §§116.10, 116.11, 116.13-116.15, 116.110-116.112, 116.114-116.118, 116.120-116.126, 116.180-116.183, and 116.310-116.314, concerning Control of Air Pollution by Permits for New Construction or Modification.

The commission also adopts amendments to §§116.130-116.134, 116.136, 116.137, 116.140, 116.141, 116.143, 116.160, 116.161, 116.170, 116.174, 116.610, 116.611, 116.614, 116.615, 116.617, 116.620, 116.621, 116.710, 116.711, 116.714, 116.715, 116.721, 116.730, 116.740, and 116.750, concerning Control of Air Pollution by Permits for New Construction or Modification.

Sections 116.14, 116.15, 116.110, 116.111, 116.115-116.117, 116.121, 116.122, 116.133, 116.137, 116.141, 116.180, 116.182, 116.183, 116.311, 116.312, 116.610, 116.620, 116.621, 116.711, and 116.740 are adopted with changes to the proposed text as published in the March 20, 1998, issue of the *Texas Register* (23 TexReg 2953). Sections 116.10, 116.11, 116.13, 116.112, 116.114, 116.118, 116.120, 116.123-116.126, 116.130-116.132, 116.134, 116.136, 116.140, 116.143, 116.160, 116.161, 116.170, 116.174, 116.181, 116.310, 116.313, 116.314, 116.611, 116.614, 116.615, 116.617, 116.710, 116.714, 116.715, 116.721, 116.730, and 116.750 and the repeals are adopted without changes and will not be republished.

The commission adopts the review of the rules contained in 30 TAC Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. This review was adopted in accordance with Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

EXPLANATION OF ADOPTED RULES. The commission adopts a new §116.15 and a new Subchapter C, §§116.180-116.183, for the purpose of implementing a program to meet the requirements of Title III of the 1990 Federal Clean Air Act (FCAA) concerning Hazardous Air Pollutants, §112(g), Modifications, as set forth in 40 Code of Federal Regulations (CFR) Part 63, §§63.40-63.44, as amended December 27, 1996, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology (§112(g)). Section 112(g) was designed to ensure that emissions of toxic air pollutants meet the requirements of a case-by-case maximum achievable control technology (MACT) if a major source of hazardous air pollutants (HAPs) is constructed or reconstructed before the United States Environmental Protection Agency (EPA) issues a MACT standard or air toxics regulation for that particular category of sources or facilities.

Changes were made throughout the rules as the result of ongoing efforts by the commission for regulatory reform. These changes are for purposes of simplification and clarification only and do not involve substantive changes in the requirements of this chapter. In order to simplify the regulatory reform effort, the commission proposed the repeal of §§116.10, 116.11, 116.13, 116.14, 116.110-116.112, 116.114-116.118, 116.120-116.126, and 116.310-116.314 (these sections are being adopted

by the commission with the changes made under regulatory reform and in response to comments). By repealing these sections, the commission was able to revise the language without having to make extensive use of the editing requirements of the *Texas Register*. Changes proposed in the *Texas Register* must be shown by using underlining and bracketing. The commission was concerned that significant revisions to the rules would be difficult for the regulated community and the public to read and comment on if the underlining and bracketing editing marks were used. In general, these changes involve using shorter sentences, limiting each citation to one main concept, reordering requirements into a more logical sequence, and using more commonplace terminology. Several suggestions of alternative language from that proposed by the commission were received. This preamble will discuss any changes to the rule language in the appropriate sections of the preamble. Although sections of Subchapter F, concerning Standard Permits, and Subchapter G, concerning Flexible Permits, were revised, these subchapters were not included in this extensive regulatory reform effort. In addition, not all of Subchapter B was included. These subchapters and remaining sections will be reviewed at a later date for purposes of regulatory reform.

The division related to nonattainment permitting and Subchapter E related to emergency orders have not been included in this rulemaking, since they are expected to be revised in subsequent rulemakings that are on a different schedule. Those sections will be reviewed for regulatory reform purposes at that time.

The following paragraphs describe the adopted amendments to Chapter 116 by subchapter.

SUBCHAPTER A: DEFINITIONS. Section 116.10, General Definitions, §116.11, Compliance History Definitions, §116.13, Flexible Permit Definitions, and §116.14, Standard Permit Definitions, were included in the regulatory reform review. These sections contain definitions that are used throughout Chapter 116 and in specific subchapters of Chapter 116. The commission is readopting the definitions because they are necessary for the implementation of the requirements of Chapter 116. The definitions provide information that assists the regulated community and the public in fully understanding the requirements of the subchapters to which they are related.

The commission amended Subchapter A by deleting those definitions that are identical or essentially the same as those in 30 TAC Chapter 101, concerning General Rules. As a result, in Chapter 116, the definitions of “de minimis impact” and “emissions unit” were deleted to eliminate redundancy.

In addition, the commission adopted amendments to the definitions that reference exemptions from permitting by referring to 30 TAC Chapter 106, concerning Exemptions from Permitting. These references were proposed in response to the recent revision to Chapter 116 that moved exemptions to Chapter 106. Correct references to the new exemption chapter, or specific sections within that chapter, have been made throughout the rules.

The definition of “federally enforceable” is revised to include the requirements of 30 TAC Chapter 113, Subchapter C, concerning National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63). These standards (commonly referred to as MACTS) are

incorporated by reference into Chapter 113, Subchapter C and this reference is being included simply to direct the reader to the correct chapter of the commission's rules.

The definition of "lead smelting plant" is revised to correct an internal conflict. The former definition stated that processing may include "oxidizing into lead oxide." This conflicts with the last sentence of the definition, which says that a facility that remelts lead bars or ingots is not a lead smelting plant. The conflict arises because lead oxide is only made by melting lead ingots.

Finally, the commission adopted new §116.15, concerning Section 112(g) Definitions. The definitions contained in §116.15 will be used in conjunction with Subchapter C, concerning Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63). The definitions in §116.15 are essentially the same as those contained in 40 CFR 63, §63.41, concerning Definitions under Subpart B, Requirements for Control Technology (see 61 FR 68399).

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS. The sections in Subchapter B, New Source Review Permits, Division 1: Permit Application (§116.110, Applicability, §116.111, General Application, §116.112, Distance Limitations, §116.114, Application Review Schedule, §116.115, General and Special Conditions, §116.116, Changes to Facilities, §116.117, Documentation and Notification of Changes to Qualified Facilities, and §116.118, Pre-change Qualification), were included in the regulatory reform changes. The commission is readopting these sections because they are

necessary in order to implement the new source review permitting requirements of the Texas Clean Air Act (TCAA). In general, these rules describe what a person must do in order to construct a new facility or modify an existing facility. The application and distance limitation sections contain the requirements that must be addressed in applications and provide guidance for how applications will be reviewed by the executive director. The executive director is authorized to include general and special conditions in all permits and the rule contains general conditions that apply to all holders of permits, special permits, standard permits, and special exemptions.

The sections in Subchapter B, New Source Review Permits, Division 2: Compliance History, (§116.120, Applicability, §116.121, Exemptions, §116.122, Contents of Compliance History, §116.123, Effective Dates, §116.124, Public Notice of Compliance History, §116.125, Preservation of Existing Rights and Procedures, and §116.126, Avoidance of Permit Applications), were included in the regulatory reform changes. The commission is readopting these provisions since they are necessary to implement the TCAA requirements in §382.0518(c) when reviewing applications for initial permit issuance, amendment, or renewal. The sections describe when such a review will be required as well as provide direction for how that review will be conducted and what must be included in the review.

The commission adopted amendments to §116.110, concerning Applicability, to reference standard permits that currently exist in 30 TAC Chapter 321, Subchapter K, concerning Confined Animal Feeding Operations, 30 TAC Chapter 332, concerning Composting; and 30 TAC Chapter 330,

Subchapter N, concerning Landfill Mining. This amendment provides clarification regarding all the standard permits (for air emissions) that are currently available.

The operations certification requirements contained in the existing §116.110(b) have been deleted as a result of recommendations made by the commission's regional offices and the Office of Compliance and Enforcement. The operations certification requirement created unnecessary reporting and paperwork and can be implemented more effectively through new source review (NSR) permits on a case-by-case basis. The operations certifications were created for the purpose of implementing Texas Health and Safety Code, §382.0518(f), which gives the commission the authority to require a demonstration from owners and operators that a facility as constructed complies with the terms of the preconstruction permit and that the operation of the facility will not violate any rules or regulations of the commission. The statutory language allows the commission flexibility to determine the time and manner of such demonstration. The rule change does away with the requirement to submit the two forms to the agency which have been found to be unnecessary in practice. The permit holder would not be relieved from the underlying requirements that are the subject of the forms (to have constructed in compliance with their preconstruction permits and to operate in compliance with commission rules and regulations.) These requirements are established by rule in §116.115(b)(2)(I).

The new §116.110(c), concerning Exclusion, makes it clear that affected sources (as defined in §116.15(1), concerning Section 112(g) Definitions) that are subject to Subchapter C are not authorized to use an exemption under Chapter 106, or an authorization under §116.116(e), concerning changes to

qualified facilities. Affected sources subject to Subchapter C can use standard permits under Subchapter F of this chapter if the terms and conditions of the standard permit meet the criteria of Subchapter C. As currently written, none of the existing standard permits meet the criteria of Subchapter C (e.g., there is no requirement for public notice). These changes were made to ensure that applicants obtain the appropriate authorization under Subchapter C and are described in more detail in the section of the preamble addressing Subchapter C.

A new §116.110(d), concerning change in ownership (formerly §116.110(c)) is adopted. This subsection was revised to specify that new owners must submit information regarding the date of the change in ownership, the name of the new owner, a contact person for the new owner, and the address and phone number of the new owner.

The commission adopts a new §116.110(e) to reflect the recent revisions to the Texas Engineering Practice Act (TEPA) which now refers to “licensed” engineers instead of “registered” engineers. The correct name of the Texas Board of Professional Engineers is included. The rule is revised to make clear that for projects with a capital cost above \$2 million, the project must be submitted under the seal of a Texas licensed professional engineer.

Section 116.111(2)(E), concerning national emissions standards for hazardous air pollutants for source categories (commonly referred to as MACTs), is revised to reference the requirements of Chapter 113, Subchapter C. The proposed language is modified by the commission to clarify that permit applications

must demonstrate compliance with all applicable MACTs. The language, as proposed, may be interpreted as saying that applicants would not have to show compliance with all MACTs, regardless of whether or not the MACTs are listed in Chapter 113, Subchapter C. The proposed language was also in §116.311(a)(4), concerning Permit Renewal Application, §116.610(a)(5), concerning Applicability (for standard permits), §116.620(a)(16), concerning Installation and/or Modification of Oil and Gas Facilities, and §116.711, concerning Flexible Permit Application. This correction has been made in all of these sections.

Changes are adopted to implement FCAA, §112(g) and 40 CFR Part 63, Subpart B, requirements in §116.111(2)(K), concerning general application, to ensure that applicants submit information in permit applications that demonstrates that the requirements of Subchapter C are met.

Section 116.112, concerning Distance Limitations, is revised to be consistent with the statutory provisions in the Texas Solid Waste Disposal Act, §361.102, concerning Prohibition on Permit for Hazardous Waste Management Facilities Within a Certain Distance of Residence, Church, School, Day Care Center, Park, or Public Drinking Water Supply. The former §116.112(b)(4) contained a typographical error that would have allowed the construction of any new commercial hazardous waste management facility or units of a facility to be located within 2,640 feet of any specified off-site receptor. The statutory provision prohibits the construction of a new commercial hazardous waste management facility that would be within 2,640 feet of any specified off-site receptor.

Section 116.115(c), concerning special conditions, is revised to include a reference to the new requirements in Subchapter C. This change allows the executive director to include a special condition in permits requiring permit holders to obtain prior written approval before constructing a facility using a standard permit under Subchapter F or an exemption under Chapter 106, if the change would cause the facility to become subject to Subchapter C. During the administrative and technical review, the executive director may determine that the proposed change will trigger one or more of the prohibitions listed under §116.115(B)(i) and (ii) and the request for authorization under Subchapter F or Chapter 106 will be denied.

Section 116.116(b)(3) is added to require permit amendments that concern a change subject to Subchapter C to comply with the provisions for public notice and comment under Subchapter B of this chapter. This change was made because 40 CFR Part 63, §63.43(c)(2)(ii), requires case-by-case MACT determinations to be subject to public notice.

Subsection (f) was added to §116.116 to authorize the use of discrete emission reduction credits (DERCs) to exceed permit allowables under certain conditions. The commission recently adopted a revised emissions banking and trading rule (22 TexReg 12517) to allow a source to meet emission control requirements by purchasing and using credits generated by another source which has reduced its emissions below the level required by rule or permit. The revised banking rule allows for the use of DERCs to exceed permitted allowable emission levels by a certain amount once within any 24-month period. In ozone nonattainment areas, this exceedance must be 25 tons or less of nitrogen oxides or

five tons or less of volatile organic compounds. In other areas, the amount may not exceed the prevention of significant deterioration significance levels as provided in 40 CFR §52.21(b)(23). In addition to other requirements, these uses must be approved by the executive director and may not cause or contribute to a condition of air pollution. The adopted language of §116.116(f) allows the use of credits to authorize certain exceedances of permit allowables, and is consistent with existing authorization in Chapter 101.

Section 116.117(a)(4), concerning Documentation and Notification of Changes to Qualified Facilities, is revised to require persons making changes to qualified facilities under §116.116(e) to maintain documentation which demonstrates that the project will comply with Subchapter C.

A minor amendment was made to §116.118 that added the word “or” in §116.118(a)(1). This was done to correct a previous typographical error.

The commission amended §116.130(a), concerning applicability of public notification and comment procedures, by adding a reference to permit renewals. Applications for permit renewals are already required to go through public notice. This change merely includes a reference to renewals in this section. Subsection (a) was revised to more closely track TCAA, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, by including the phrase “or to be located.” This revision does not change the current requirement to publish notice in a newspaper of general circulation in the municipality where the facility is located, or to be located. Section 116.130 was also revised by

adding a new subsection (c) that requires applications subject to review under Subchapter C to go through public notice. All applications subject to the requirements of FCAA, §112(g) and 40 CFR Part 63, Subpart B, whether initial applications or amendments to existing case-by-case MACT determinations, must go through the public notice process. This is because 40 CFR Part 63, Subpart B, §63.43(c)(2)(ii), requires that all such determinations be subject to public notice.

To assist in the implementation of the commission's directive to facilitate and improve the public notice process, the phone number of the appropriate commission office to contact for further information will now be included as a part of the public notice required in §116.132(a)(11) and §116.133(a)(6) rather than the phone number of the appropriate commission regional office.

Section 116.136(a) was revised to correctly refer to the requirement that the executive director make a preliminary determination to issue or deny a permit subject to the FCAA, Title I, Parts C or D or to 40 CFR §51.165(b) or the availability of the preliminary analysis that is required for other permitting actions. This change makes §116.136(a) consistent with the requirements of §116.132(a)(6) and (7), concerning public notice format.

The commission amended §116.140, concerning Applicability of Permit Fees, by deleting the reference to operating permits and standard exemptions, because these types of authorizations are no longer included in Chapter 116. The reference to operating permits was deleted because the commission no longer issues state operating permits apart from a state construction permit. This should not be

confused with federal operating permits issued under 30 TAC Chapter 122, concerning Federal Operating Permits. Exemptions from permitting are now contained in Chapter 106.

Section 116.141(b)(1) was amended to specify that any application for new or modified facilities controlled by the federal government will be charged a fee of \$450. The former provision qualified the fee requirement for federal government applications submitted after January 1987. Since all of the pre-1987 applications from the federal government have been acted on by the commission, this provision is no longer necessary.

Section 116.141(c)(1)(A) is revised to address an interpretation problem with the current rule. As it was written, the rule confused some applicants and staff concerning the computation of direct costs for facilities that are no longer permitted (e.g., the permit expired and was not renewed). A historical review of this section indicated that the original fee language was added prior to any requirements for renewal (and expiration) of permits. The confusion centered on whether “permitted” meant currently permitted or ever permitted regardless of current status. With two possible interpretations, neither has been consistently applied and the adopted language rectifies this situation. The commission does not believe that it is appropriate to allow the direct costs of process and control equipment of a facility to be excluded if the facility once had a permit but no longer does. Allowing this exclusion would promote the argument that higher renewal fees could be avoided in favor of a minimum new permit fee. It is not expected that this change will result in significantly higher fees and it will ensure that all applications are reviewed consistently for fee determinations.

The commission amended §116.143 by correcting the commission mailing address where permit fees are submitted. The previous mailing address was a street address rather than a post office box.

**SUBCHAPTER C: HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING
CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES (FCAA, §112(g), 40 CFR Part 63).**

The new Subchapter C is intended to meet the requirements of Title III of the 1990 FCAA concerning Hazardous Air Pollutants (HAPs), §112(g), Modifications, as set forth in 40 CFR 63, §§63.40-63.44, as amended December 27, 1996. Section 112(g) was designed to ensure that emissions of toxic air pollutants meet the requirements of case-by-case MACT if a major source is constructed or reconstructed before EPA issues a MACT standard or air toxics regulation for that particular category of sources or facilities.

40 CFR Part 63, Subpart B, requires the commission to make case-by-case MACT determinations for affected sources (as defined in §116.15(1), concerning Section 112(g) Definitions) that become subject to §112(g) prior to the EPA promulgating a MACT that would apply to the affected source. 40 CFR 63, §63.42, allows states to rely on existing NSR permitting programs to implement the requirements of §112(g) if the NSR program meets the requirements of that subpart. The commission believes that the adopted revisions to Chapter 116 concerning §112(g) will successfully implement the requirements of §112(g) and 40 CFR Part 63, Subpart B.

40 CFR Part 63, §63.40(b), Overall Requirements, says in part that the “requirements of §§63.40 through 63.44 of this subpart apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after the effective date of the section 112(g)(2)(B) (as defined in §63.41) and the effective date of a title V permit program in the State....” The commission interpreted §63.40(b) as containing a two-part test regarding the effective date of 40 CFR Part 63, Subpart B: the §112(g) program would not be effective in a state until June 29, 1998, passed and a state had an approved federal operating permit program.

At the time the revisions to Chapter 116 were proposed, the commission understood that the interim approval for the source category limited program was no longer considered to be effective by the EPA (that program was approved on June 25, 1996 (61 FR 32693)). The EPA had informed the commission that due to the extensive revisions to Chapter 122 in November 1997, it no longer considered the operating permit program to be approved in Texas. Thus, since §63.40(b) has a two-part test, the commission believed that the §112(g) program would not be effective in Texas until June 29, 1998, passed and the EPA approved the November 1997 revisions to Chapter 122.

Based on comments submitted by the EPA in response to the proposed rules, and in discussions with EPA Region VI staff, the commission now understands that EPA has reconsidered its position concerning the source category limited program and now considers it to be the approved federal operating permit program for the state. The EPA believes that once a state has an approved program (whether it is full, interim, or source category limited), then that is the approval that triggers the

effective date for §112(g). Thus, regardless of whether a source is subject to either the full or interim program, once the interim program was approved in June 1996, that is the approval date that is used to trigger the effective date provisions of §63.40(b).

The commission has revised §116.180(b) and §116.182 to make it clear that the §112(g) program will be effective for all affected sources in Texas on or after June 29, 1998. Thereafter, if a source makes a change subject to Subchapter C, it must apply to the commission for a case-by-case MACT determination under §116.182, concerning Application, regardless of whether the source is subject to the interim or full operating permit program. Administratively complete applications that are submitted prior to June 29, 1998, will not be subject to the requirements of Subchapter C. Section 116.180(a)(1)(B)(vi) was revised to include a reference to “affected source” and to correct a typographical error that referred to the “executive director” twice in one sentence.

All case-by-case MACT determinations are subject to the public notice requirements of Subchapter B. Thus, affected sources will not be able to use a Chapter 106 exemption or an existing Subchapter F standard permit. Currently, none of the existing standard permits meet the requirements of Subchapter C. Future standard permits may be developed that meet the criteria of Subchapter C.

Affected sources will not be able to use §116.116(e), concerning changes to qualified facilities, because §63.43(d)(1) provides that the MACT emission limitation “shall not be less stringent than the emission

control which is achieved in practice by the best controlled similar source, as determined by the permitting authority.” The commission believes that the use of best available control technology (BACT) as required by Chapter 116 will, in most cases, meet the level of control contemplated by §63.43(d)(1). Section 116.116(e) allows for the use of ten-year old BACT for qualified facilities. In some cases, ten-year old BACT may not necessarily be equivalent to today’s BACT. If a case-by-case MACT determination is more restrictive than BACT, the affected source will be required to meet the MACT requirements. An additional prohibition on the use of §116.116(e) is the requirement for case-by-case MACT determinations to go through public notice.

Affected sources will have limited use of flexible permits under Subchapter G. Currently, flexible permits allow for control that exceeds BACT on one facility in lieu of installing controls on other facilities. Section 112(g) and 40 CFR Part 63, Subpart B, require the case-by-case MACT determination to be applied to the specific affected facilities. Therefore, §116.711(3) was revised to indicate that BACT shall be applied to specific facilities that must comply with Subchapter C. As long as a facility applies BACT and conducts public notice, the facility would still be able to use flexible permits in conjunction with determinations made under Subchapter C. Again, if a case-by-case MACT determination is more restrictive than BACT, the source will be required to meet the MACT requirements.

In §116.181, concerning Exclusions, the commission adopts 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.

In general, if the owner or operator wants to construct or reconstruct an affected source (as specified in §116.180(a)(1) and (2), concerning Applicability), then prior to that construction or reconstruction, the owner or operator must apply to the commission for a case-by-case MACT determination under §116.182, concerning Application. The application must contain the information required by the commission as provided in §116.111, 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 affected source must undergo the public notice requirements required by §116.130, which includes a 30-day public comment period and opportunity for a contested case hearing. After fully considering public comments and the results of any hearing, the commission would then issue (or deny) a permit, or approve a permit amendment, authorizing the construction or reconstruction of the affected source. The case-by-case MACT determination codified in a permit issued under Chapter 116 would become an applicable requirement of Chapter 122 after satisfying the appropriate operating permit revision process and would be included as a condition in an operating permit.

The executive director of the commission certifies that the rule as adopted satisfies all applicable requirements established by 40 CFR §§63.40-63.44 for a §112(g) program. As outlined in the EPA

preamble to the final rules implementing §112(g) (see 61 FR 68390), the program proposed is not required to have EPA approval before taking effect.

SUBCHAPTER D: PERMIT RENEWALS. The sections in Subchapter D (§116.310, Notification of Permit Holder, §116.311, Permit Renewal Application, §116.312, Public Notification and Comment Procedures, §116.313, Renewal Application Fees, §116.314, Review Schedule) were included in the regulatory reform changes. The commission is readopting these sections because they implement the TCAA requirements in §382.055, concerning renewals of NSR permits. The sections include the process for notifying permit holders that their permits are due for renewal and they contain the requirements for renewal fees and the review schedule for a renewal. The contents of a renewal application are described as well as the requirements for public notice of renewals.

Section 116.311(5) is added to include the requirement that applicants submit information in applications for permit renewals demonstrating that the facility meets the requirements of Subchapter C of this chapter.

Section 116.314, concerning Review Schedule, is amended to refer to the correct chapters of the commission's regulations concerning contested case hearings.

SUBCHAPTER F: STANDARD PERMITS. The commission adopts the new §116.610(d) to clarify that facilities subject to Subchapter C of this chapter are not eligible for a standard permit under

Chapter 116, unless the particular standard permit's terms and conditions meet the requirements of Subchapter C. This is because 40 CFR Part 63, §63.43(c)(2)(ii), requires all case-by-case MACT determinations to be subject to public notice.

Section 116.614, concerning Standard Permit Fees, was amended to correct the commission mailing address where permit fees are submitted. The previous mailing address did not have the correct mail code or zip code.

Section 116.620, concerning Installation and/or Modification of Oil and Gas Facilities, was amended to reference the appropriate exemptions under Chapter 106 rather than the former standard exemption. In addition, §116.620(a)(13) now includes reference to case-by-case MACT review under Subchapter C.

The commission also amended §116.621(2)(F), concerning municipal solid waste landfills, to refer to the correct exemptions under Chapter 106 rather than the former standard exemption. In addition, §116.621(2)(F) includes reference to case-by-case MACT review under Subchapter C.

SUBCHAPTER G: FLEXIBLE PERMITS. Consistent with the deletion of §116.110(b), the operations certification requirements contained in §116.710(b) have also been deleted.

Section 116.710(c) is revised to be consistent with the changes proposed to §116.116(e), concerning seals of Texas licensed professional engineers.

Section 116.711(3) is revised to require applicants to demonstrate that the proposed control technology meets the current BACT requirements for any constructed or reconstructed facility that is required to meet Subchapter C.

Section 116.711(11), concerning flexible permit applications, was amended by adding a requirement that facilities subject to review for constructed or reconstructed major sources of hazardous air pollutants under FCAA, §112(g) and 40 CFR Part 63 must comply with Subchapter C.

Section 116.715(a), concerning general and special conditions, was amended to include the case-by-case MACT review under Subchapter C when considering whether a facility is eligible for a flexible permit under §116.710. A reference to Subchapter C was added to ensure that a facility operating under the terms of a flexible permit is in compliance with the federal permitting requirements of Subchapter C. As noted in the preamble discussion concerning Subchapter C, as long as a facility applies BACT (or MACT if it is determined to be more restrictive than BACT) and conducts public notice, the facility would still be able to use flexible permits in conjunction with case-by-case MACT determinations. In addition, §116.715 is amended to make the correct reference to Chapter 106. In order to properly refer to the Engineering Services Section, §116.715(c)(4) was amended to delete a reference to the Source and Mobile Monitoring Section.

Section 116.740(b), concerning public notice and comment, is added to require public notice for flexible permit amendments that address a case-by-case MACT determination under Subchapter C.

Flexible permit amendments that do not concern case-by-case MACT determinations are not required to complete the public notice process. This change was made to allow sources to continue to fully utilize flexible permits while meeting the conditions of Subchapter C.

Sections 116.721 and 116.750, concerning Amendments and Alterations and Flexible Permit Fee, were amended to correctly reference Chapter 106 rather than the former Chapter 116 for standard exemptions. Section 116.750(b) was amended to clarify that the minimum fee for a flexible permit amendment is \$450. This is not a change to the existing fee structure; rather, it is to correct an oversight to include the \$450 minimum fee. The \$450 minimum fee has been applied, when applicable, to all applications for flexible permit amendments. This correction makes this section consistent with Subchapter B regarding fees for NSR permit amendments.

REVIEW OF AGENCY RULES. The commission adopts the review of the rules contained in Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification, as mandated by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for re adoption rules adopted under the Administrative Procedure Act (APA). The review includes, at a minimum, an assessment that the reason for the rules continues to exist. The commission reviewed the rules in Chapter 116 and determined that the rules in Chapter 116 are still necessary since they implement critical provisions of the Texas Health and Safety Code, Texas Clean

Air Act, Chapter 382, as well as 42 United States Code Annotated, §§7401 to 7671q, of the Federal Clean Air Act. Chapter 116 provides the procedures for action on any application for a permit for construction or modification or renewal of a permit for a facility that will emit air contaminants into the air of the state. No comments were received regarding the readoption of the rules.

FINAL 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 it does not meet the definition of a “major environmental rule” as defined in the Code. The portions of the rules implementing the FCAA, §112(g) do not meet the definition because the obligations have already been established by federal law and thus are not new requirements. The other portions of the rules correcting typos, clarifying language, and instituting regulatory reform changes are not of a magnitude to affect the economic factors in a material way.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendments and repeals is to 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, Subpart B, Requirements for Control Technology (§112(g)). The adopted amendments and repeals implement the commission’s guidelines on regulatory reform as well as provide clarifications to existing

rule language, streamline procedures, and make the rule consistent with other commission rules.

Adoption and enforcement of the rule amendments and repeal will not create a burden on private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Conservation Commission. Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and §505.22(a), and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with applicable CMP goals and policies. The commission reviewed this rulemaking action for consistency, and has determined that it is consistent with the applicable CMP goals and policies.

The revisions to Chapter 116 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, Subpart B, Requirements for Control Technology. The revisions are consistent with the goals and policies of the CMP because they implement the new §112(g) program. The new §112(g) program requires preconstruction review of

major sources of hazardous air pollutants. This new program will require a review of the controls proposed for these major sources and could result in a reduction in air emissions.

The majority of the revisions will not impact air emissions since they are being done under the commission's guidelines on regulatory reform or for the purpose of clarification of existing procedures. The changes concerning fees should not impact the status quo of the NSR permitting program, since the changes concerning direct costs provide consistency when calculating fees for new construction permits.

HEARING AND COMMENTERS. A public hearing was held in Austin on April 16, 1998, and the public comment period closed on April 20, 1998. No oral testimony was received at the hearing on the proposed rules or on the rules review of Chapter 116. The EPA, the Texas Industry Project (TIP), and TU Services (TU) submitted written comments on the proposal.

TU Services commented that in §116.15(7), for purposes of MACT, the definition of "new source" should conform to the definition contained in the FCAA, §112(g).

The FCAA, §112(a)(4) defines "new source" as "a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to each source." Section 116.10(12) of the General Definitions does define "new source"; however, that definition is not intended to modify the §112(a)(4) definition of "new source." The "MACT emission limitation for new

sources” terminology and definition was taken directly from Part 63. It is not the commission’s intent to revise the definition of “new source” or to apply it in any way that differs from the interpretation given by the EPA.

The TIP commented that the last sentence of §116.15(8), the definition of “Process or production unit” is confusing and should be deleted. This is because the sentence contains the federal term “facility” which is different than the state definition.

The commission agrees that inconsistencies exist between state and federal terminology; however, it does not believe that the proposed deletion is necessary. This definition was taken directly from Part 63 and the commission intends to interpret the term “facility” consistent with the apparent intent of Part 63. The commission believes that the EPA’s use of the term “facility” is intended to clarify that a plant site may contain multiple process or production units.

Throughout the remainder of Chapter 116, the commission has revised the rules to refer to “affected sources.” The definition of “Affected source” is in §116.15(1), concerning Section 112(g) Definitions. That term is defined as “the stationary source or group of stationary sources which, when fabricated (on-site), erected, or installed meets the criteria in §116.180(a)(1) and (2) of this title (relating to Applicability).” Sections 116.180(a)(1) and (2) incorporate from 40 CFR Part 63 the definitions of “construct a major source” and “reconstruct a major source.” Since an

“affected source” is actually a source that is either constructing or reconstructing, it is appropriate to use the term “affected source” to describe the applicability of Subchapter C.

The TIP suggested moving the phrase “before any actual work is begun on the facility” from the end of §116.110(a)(4) to the general language of subsection (a) in order clarify whether this phrase modifies paragraph (4) or paragraphs (1) - (4).

The commission agrees with this suggestion and has incorporated this change for adoption. The intent of this phrase is to modify paragraphs (1)-(4). This change does not alter the current practice of the commission.

The TIP commented that §116.110(c) should refer to constructed or reconstructed “sources” rather than “facilities” to be consistent with the definition of “affected source” in §116.15(1).

The commission agrees with the comments and has revised §116.110(c) to refer to read as follows:
“Exclusion. Owners or operators of affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are not authorized to use:”

TU Services commented that in §116.110(d)(1), the commission should consider extending the time period for notification of ownership changes that involve multiple sites and permits.

The commission declines to make the change suggested by TU because the suggestion is beyond the scope of the rule proposal. The commission believes that it is important to maintain as current and accurate files as possible concerning ownership of permitted facilities. The commission is not aware of any situations where the 30-day time period did not allow a sufficient amount of time to submit the required information.

The TIP commented that §116.111(2)(K) incorrectly uses word “facility” when describing who is subject to Subchapter C and recommended alternative language.

The commission agrees with the suggestion and has revised §116.111(2)(K). However, to be consistent, the commission will use the term “affected source” rather than “proposed major source” as suggested by TIP. The rule will be revised to read as follows: “Hazardous Air Pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions) for hazardous air pollutants shall comply with all applicable requirements under Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).”

The TIP commented that use of “records” and “paragraph” in §116.115(b)(2)(F) is confusing and supports the original language previously listed in §116.115(b)(6).

The commission agrees that the proposed language could be simplified and has revised §116.115(b)(2)(F) to delete the phrase “by this paragraph.” To be consistent, §116.115(b)(2)(F)(i) is revised to read “maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;”.

The TIP commented that the reference to “exemptions” should be deleted from §116.115(a) and §116.115(c). It also commented that Chapter 116 is not consistent when listing which types of permit authorizations are applicable. Some references generically list “permits” in some references assumed to mean all types of permit authorizations versus other references that specify “flexible permits” or “standard permits.”

The intent of the proposed change was not to suggest that exemptions now contained in Chapter 106 would have special conditions. Chapter 116 has authorized several types of exemptions in the past; for example, special exemptions and standard exemptions. Special exemptions, although no longer issued by the commission, may contain special conditions that remain enforceable. The language in §116.115(a) and (c) is revised to include a reference to “special exemptions.” Generic

references to “permits” exist in the current rule language and the suggestion for greater specificity will be considered in future regulatory reform efforts.

The TIP commented that deleting the words “govern and ” from §116.115(b)(2)(I)(ii) is a substantive change and recommends adding those words back as originally listed in §116.115(b)(9).

While the commission does not believe that the deletion would change the intent of the rule, the rule has been revised to retain the original language.

TIP commented that §116.115(c)(2)(B) appeared to require “increases in a particular pollutant” to be subject to Subchapter C. TIP noted that this would be more restrictive than 40 CFR Part 63, since the rule only implements the sections of §112(g) that require new source MACT for construction or reconstruction of major sources and not the section that requires existing source MACT for modifications of existing facilities. TIP recommended deleting the reference to Subchapter C to make the rule language clear.

The commission agrees that “increases in a particulate pollutant” not associated with construction or reconstruction of a major source of HAPs should not cause a facility to be subject to Subchapter C. 40 CFR Part 63, Subpart A, General Provisions, §63.4(b), Prohibited activities and circumvention, prohibits the building, erection, installation, or use of any article, machine, equipment, or process that conceals an emission that would otherwise constitute noncompliance

with a relevant standard. The section describes such concealment, in part, as “the fragmentation of an operation such the operation avoids regulation by a relevant standard.” The intent of this language is to allow the commission the opportunity to review future projects at facilities with permits that authorize emissions of HAPs near the major source threshold. This is consistent with the procedures used in the review of permits subject to either Prevention of Significant Deterioration under §§116.160-116.163 or Nonattainment Review under §116.150 and §116.151. Therefore, the commission has not made the requested change.

TIP commented that adding the word “include” in §116.116(a) inappropriately broadened the types of representations that are in permit applications and that become conditions upon which a permit is issued. TIP recommended deleting the word “include.”

It was not the commission’s intent to broaden the scope of representations that become conditions upon which permits, special permits, or special exemptions are issued by use of the word “include.” However, the commission recognizes that this language could result in some misinterpretation and agrees that the word “include” should be deleted from the final rule.

TIP commented that the language in §116.116(b)(3), “that concerns a determination for constructed or reconstructed sources under Subchapter C...” is confusing. TIP suggested rewriting that section to say “Any person who applies for an amendment to a permit to construct or reconstruct a major source of HAP subject to Subchapter C....”

The commission agrees that the term “concerns” is unclear and has revised the rule language to read “Any person who applies for an amendment to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions) under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in §§116.130-116-134, 116.136, and 116.137 of this title (relating to Public Notification and Comment Procedures).”

TU Services commented that the term “effects screening level” should be defined in §116.116(e)(3)(C) and (E) for clarity and consistency.

The commission does not think it is necessary to define “effects screening level” (ESL). ESLs are used to evaluate the potential for effects as a result of exposure to a particular substance. They are based on data concerning health effects, odor, nuisance potential, vegetation effects, or corrosion effects. They are not ambient air standards. If predicted or measured airborne levels of a substance do not exceed the screening level, the commission would not expect any effects. If concentrations of a substance exceed the ESL, it does not necessarily indicate a problem, but may be a trigger for a more in-depth review.

TIP commented that the proposed changes to §116.116(e)(6) may create confusion about the addition of control methods at qualified facilities. TIP believes that the changes appear to require that all additional

control measures are subject to the requirements of Chapter 116, rather than only those additional control methods that are being implemented for the purpose of making a facility a qualified facility.

The commission agrees with the proposed changes and revised §116.116(e)(6) to read: “The implementation of any additional control methods to qualify a facility shall be subject to the requirements of this chapter.”

TU Services commented that §116.117(b)(5)(B) should identify physical location(s) at which an “effects screening level” is to be determined.

The commission has added the following phrase “at any point off-property” to the end of §116.117(b)(5)(B). Under the former rules, for the purpose of establishing reportable limits at qualified facilities, the impact of effect screening levels has always been considered at points beyond the property line. This change merely clarifies the long standing practice of the commission.

TIP commented that §116.121 should refer to “air contaminant” rather than “substance” since “air contaminant” is a defined term in the TCAA and it is commonly used in the area of air pollution control.

Since “substance” is not currently defined in the rules, the commission has added the following language to replace that term: “The compliance history is not required if the total increased actual emissions of any specific air contaminant (e.g., benzene, arsenic, etc.) at the site will be accompanied by greater than a 1.1 to 1 reduction of the same specific air contaminant at the site.”

TIP requested that the commission not adopt the changes to §116.122(b) which would change the rule so that it would refer to a singular violation rather than plural violations. TIP requested that the rule be left in its plural form.

It appears that TIP believes that changing “violations” from plural to singular alters the intent of this subsection. The commission did not intend to change the commission’s procedures for compiling compliance history and the rule has been revised to refer to “violations.”

TU Services commented that the public notice procedures in Subchapter B, Public Notification and Comment Procedures, should be modified to match the existing procedures in Chapter 122, concerning Federal Operating Permits.

The current public notice procedures for Chapter 116 conform with the requirements of the TCAA and the APA. The procedures for Chapter 122 were developed in order to meet the requirements of 40 CFR Part 70, Federal Operating Permits. In the absence of regulatory and statutory changes, public notice procedures under Chapter 116 cannot be revised to implement the

procedures under Chapter 122. The request of TU Services is beyond the scope of the rulemaking proposal.

TIP commented that although §116.141(b) was not proposed for revision, it should be revised to say “shall” rather than “may” regarding the schedule to be used for fee payments. TIP noted that the payment of fees is not discretionary.

The commission agrees that the fee schedules contained in this subsection are not optional and that the word “shall” is more appropriate than “may.” In addition, the commission has changed “schedule” to “schedules” to be consistent with the structure of this subsection. This change does not alter the current commission practice for establishing fees for permit applications.

EPA commented on a section of the proposal preamble that the interpretation of §63.43(d) to require case-by-case MACT determination to be equivalent to BACT determinations is incorrect. EPA noted that the FCAA contains specific definitions for MACT and BACT and EPA does not consider the terms to be equivalent. It further stated that the state’s administrative procedures for preconstruction review may be used as long as they meet §63.43(c)(2)(ii).

The commission believes in most cases that BACT determinations will exceed the requirements of case-by-case MACT determinations as required in 40 CFR Part 63 Subpart B, Requirements for Control Technology. In cases where the Part 63 MACT determination is more restrictive than BACT as required

in Chapter 116, the commission intends to comply with 40 CFR Part 63, Subpart B, Requirements for Control Technology. No changes to the rule language are necessary

to make this clarification. If a case-by-case MACT determination is more restrictive than BACT, the affected source will be required to meet the MACT requirements.

TIP stated that the definitions of “Construct a major source” and “Reconstruct a major source” in §116.180(a)(1) and (2) will cause confusion since they are not included in §116.15, concerning §112(g) Definitions.

Although these terms can be considered definitions, they also contain several procedural requirements.

The commission believes that procedural requirements are not appropriate for definition sections.

Therefore, the rule has not been revised in response to this comment.

TU Services requested that the term “toxics-best available control technology” in §116.180(a)(1)(B)(ii)(I) be defined.

40 CFR Part 63 does not contain a definition of “toxics-best available control technology,” rather, it uses the term “toxics BACT” as an example of control technology that states may use to implement §112(g).

The preamble to 40 CFR Part 63, Subpart B (61 FR 68383, 68389) discusses the definition of “construct a major source.” Specifically, the EPA acknowledges that states may use different levels of control in their air quality programs (e.g., BACT, lowest achievable emission rule, or a state toxics program that requires toxic-BACT), for the purpose of the definition of “construct a major source.” The commission intends to implement the requirements of §112(g) using the current NSR permitting process, which requires a BACT

and impacts review. Therefore, the commission will not make the requested change.

Both the EPA and TIP commented on the effective date of the commission's §112(g) program. The EPA commented that §116.182 limits the implementation of §112(g) to the sources in Texas covered by the Texas interim operating permit program. EPA noted that sources not covered by the interim program will also be subject to §112(g) after June 29, 1998, and will be required to obtain a §112(g) determination from the EPA prior to the start of construction. TIP commented that in §116.180(b), the commission should conduct the §112(g) reviews for sources in Texas in order to avoid duplicative review by the commission and the EPA and recommended adopting whatever compliance date was necessary to avoid such duplication.

Based on the comments received from the EPA and on discussions with the EPA staff, the commission has revised the final rule to make clear that the effective date for the §112(g) program is June 29, 1998. The commission will conduct all of the §112(g) reviews that may be required by Subchapter C. This issue is discussed further in the "EXPLANATION OF ADOPTED RULES" section of this preamble.

TIP commented that §116.181(d) (which implements 40 CFR §63.40(d)) should be deleted, since it could result in local authorities making case-by-case MACT determinations under TCAA, §382.113 that are more restrictive than those that might be made by the commission.

The TIP appears to believe that removing this rule language would prevent local authorities from developing a more stringent control requirement than a state or federal requirement. This language was taken from §63.40(d) and does not enhance local authority beyond that already authorized under TCAA,

§382.113. Under §382.113, local programs are not prohibited from having requirements more stringent than state or federal requirements. The language has not been revised in response to this comment.

TIP commented that §116.182 is confusing and suggested that the language be rewritten to refer to “affected sources” rather than “new facility (major source).” TIP also noted that the reference to “approved operating permit program” could cause confusion about the effective date of the §112(g) program in Texas.

The commission agrees with the comment regarding the use of the term “affected source” and has revised the final rule to reflect this change. The discussion regarding the effective date of the §112(g) program is in the section of the preamble entitled “EXPLANATION OF ADOPTED RULES.” The final rule has been revised to clarify the effective date of the §112(g) program.

TIP commented that §116.183 contains an incorrect reference to “facility” and suggested that the section be rewritten to refer to “affected source” as defined in §116.15(1).

The commission agrees with this comment and has revised the final rule to say “Proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with the public notice requirements contained in §116.130 of this title (relating to Applicability).

TIP commented that the language of §116.312 currently requires the executive director to provide written notice to permit holders within 30 days of receipt of a complete application for permit renewal. TIP noted that the proposed revisions did not specifically provide for notice within 30 days of receipt of a complete application. TIP further commented that neither the current nor proposed rule explains whether the commission is referring to

administratively or technically complete applications. TIP suggested that since the commission is making changes to Chapter 116 under regulatory reform, the commission should consider outlining a procedure for reviewing renewal applications and notifying applicants of errors and for providing notice of when an application is ready to undergo public notice.

The commission has revised the first sentence in subsection (a) to read as follows: “The executive director shall mail a written notice to the permit holder within 30 days after receipt of a complete application.”

Current practice is to send a permit renewal application to public notice as soon as the application is deemed administratively complete. Currently, applicants are notified of errors and requests for additional information by letter throughout the review process. Although this section was revised under the regulatory reform process, the commission believes adopting a new process with additional timelines for review of renewal applications without additional opportunity for public comment would be inappropriate.

The commission is not making the suggested changes beyond the one noted previously.

TIP commented that §116.610(d) contained an incorrect reference to “facility” and suggested that the section be rewritten to refer to “affected source” as defined in §116.15(1).

The commission agrees with this comment and has replaced the proposed language with the following: “Any project involving a proposed affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).” Affected sources subject to Subchapter C of this chapter may use a standard

permit under this subchapter only if the terms of the specific standard permit meet the requirements of Subchapter C of this chapter.”

TIP suggested that the phrase “is subject to” be added to §116.621(2)(F) prior to the reference to Subchapter C.

This is because the clause “any project which constitutes a new major source, or major modification” applies to new source review and not to §112(g) sources.

The commission agrees with the suggested comment and will revise §116.621(2)(F) to read: “any project 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), Part D (nonattainment review) and regulations promulgated thereunder, or is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall be subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.”

The commission agrees that the clause “any project which constitutes a new major source, or major modification” applies to new source review and not to §112(g) sources.

TIP commented that the language in §116.711(3) is confusing since all changes to facilities with HAPs could “concern” a MACT determination. TIP requested that the language be revised to be clear that the section applies to major sources of HAPs that are subject to Subchapter C and not all facilities.

The commission agrees with the comment and will revise §116.711(3) to read: “For new facilities and proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) the use of BACT shall be demonstrated for the individual facility or affected source.

TIP requested that the language in §116.711(11) be revised to be clear that the section applies to major sources of HAPs that are subject to Subchapter C and not all facilities.

The commission agrees with the comment and has revised §116.711(11) to read: “Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the proposed source is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), it shall comply will all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).”

TIP commented that the language “that concerns a maximum achievable control technology determination” in §116.740(b) is ambiguous and recommended that it be deleted.

The commission agrees with the comment and has changed the final rule to say: “Any person who applies for an amendment to a flexible permit regarding an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants:

Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63) shall comply with the provisions in §§116.130-116-134, 116.136, and 116.137 of this title.”

STATUTORY AUTHORITY. The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state’s air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for

renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

SUBCHAPTER A : DEFINITIONS

§§116.10, 116.11, 116.13, 116.14

§116.10. General Definitions.

§116.11. Compliance History Definitions.

§116.13. Flexible Permit Definitions.

§116.14. Standard Permit Definitions.

SUBCHAPTER A : DEFINITIONS

§§116.10, 116.11, 116.13-116.15

STATUTORY AUTHORITY. The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for

renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.10. General 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 this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Actual emissions** - The highest rate of emissions of an air contaminant actually achieved from a qualified facility within the 120-month period prior to the change. This rate cannot exceed any applicable federal or state emissions limitation. This definition applies only when determining whether there has been a net increase in allowable emissions under §116.116(e) of this title (relating to Changes to Facilities).

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

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

(B) **Exempted facility** - For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title

(relating to General Requirements), the emissions rate specified in the applicable exemption, or the federally enforceable emission rate established on a PI-8 form.

(C) **Grandfathered facility** - For a qualified grandfathered facility, the allowable emissions shall be the maximum annual emissions rate after the implementation of any air pollution control methods to become a qualified facility, plus 10% of the maximum annual emissions rate prior to the implementation of such control methods, but in no case shall the allowable emissions be greater than the maximum annual emissions rate prior to the implementation of such control methods. The maximum annual emissions rate is the emissions rate at the maximum annual capacity according to the physical or operational design of the facility, data from actual operations over a period of no more than 12 months that demonstrates the maximum annual capacity, or other information that demonstrates the maximum annual capacity. Except where a grandfathered facility has been modified, the allowable emissions for the modification shall be determined as a permitted facility.

(D) **Standard permit facility** - For a facility authorized by standard permit, other than §116.617(2) of this title (relating to Standard Permits for Pollution Control Projects), the allowable emissions shall be the maximum emissions rate represented in the registration for the standard permit.

(E) **Special exemption facility** - For a facility operating under a special exemption, the allowable emissions shall be the emissions rate represented in the original special exemption request.

(F) The allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls.

(3) **Best available control technology (BACT)** - BACT with consideration given to the technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility.

(4) **Facility** - A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.

(5) **Federally enforceable** - All limitations and conditions which are enforceable by the EPA, including:

(A) those requirements developed under Title 40 of the Code of Federal Regulations (CFR) Parts 60 and 61 (40 CFR 60 and 61);

(B) Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63));

(C) requirements within any applicable state implementation plan (SIP);

(D) any permit requirements established under 40 CFR §52.21; or

(E) any permit requirements established under regulations approved under 40 CFR Part 51, Subpart I, including permits issued under the EPA-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(6) **Grandfathered facility** - Any facility that is not a new facility since it was constructed prior to the permit requirements of this chapter.

(7) **Lead smelting plant** - Any facility which produces purified lead by melting and separating lead from metal and nonmetallic contaminants and/or by reducing oxides into elemental lead. Raw materials consist of lead concentrates, lead-bearing ores or lead scrap, drosses, or other lead-bearing residues. Additional processing may include refining and alloying. A facility which only remelts lead bars or ingots for casting into lead products is not a lead smelting plant.

(8) **Maximum allowable emissions rate table (MAERT)** - A table included with a preconstruction permit issued under this chapter that contains the allowable emission rates established by the permit for a facility.

(9) **Modification of existing facility** - Any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

- (A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;
- (B) insignificant increases at a permitted facility;
- (C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;
- (D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, under the TCAA, §382.057, from preconstruction permit requirements;
- (E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:
- (i) has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, an air pollution control method that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit; or

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

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

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with TCAA, §382.060, as that section existed prior to September 1, 1991.

(10) **New facility** - A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

(11) **New source** - Any stationary source, the construction or modification of which is commenced after March 5, 1972.

(12) **Nonattainment area** - A defined region within the state which is designated by the EPA as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d).

(13) **Public notice** - The public notice of application for a permit as required in this chapter.

(14) **Qualified facility** - An existing facility that satisfies the criteria of either paragraph (9)(E)(i) or (ii) of this section.

(15) **Source** - A point of origin of air contaminants, whether privately or publicly owned or operated.

§116.11. 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 §§116.120-116.126 of this title (relating to Compliance History) shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Adjudicated decision** - Any conviction, final order, judgment, 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, judgment, 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.

(2) **Compliance event** - An adjudicated decision or compliance proceeding as defined in paragraphs (1) and (4) this section.

(3) **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.

(4) **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.

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

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

§116.13. Flexible Permit Definitions.

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

(1) **Emission cap** - Emission limit for a specific air contaminant based on total emissions of that pollutant adjusted by an insignificant emissions factor from all sources that are included in a flexible permit.

(2) **Expected maximum capacity** - The maximum capacity of a facility according to its physical and operational design and planned operation.

(3) **Individual emission limitation** - Emission limit for a specific air contaminant not covered by an emission cap for an individual facility adjusted by an insignificant emissions factor.

§116.14. Standard Permit Definitions.

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

(1) **Off-plant receptor** - For the purposes of Subchapter F of this chapter (relating to Standard Permits) only, shall be defined as any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or owner of the property upon which the facilities are located.

(2) **Oil and gas facility** - For the purposes of Subchapter F of this chapter only, shall be defined as facilities which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth's surface. These oil and gas facilities include, but are not limited to: oil or gas production facilities; water injection facilities; carbon dioxide separation facilities; or oil or gas pipeline facilities consisting of one or more tanks, separators, dehydration units, free water knock-outs, gunbarrels, heater treaters, vapor recovery units, flares, pumps, internal combustion engines, gas turbines, compressors, natural gas liquid recovery units, or gas sweetening and other gas conditioning facilities. This definition does not include sulfur recovery units.

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

§116.15. Section 112(g) Definitions.

The following words and terms, when used in Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology (FCAA, §112(g), 40 Code of Federal Regulations (CFR) Part 63)), as amended December 27, 1996, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Affected source** - The stationary source or group of stationary sources which, when fabricated (on-site), erected, or installed meets the criteria in §116.180(a)(1) and (2) of this title (relating to Applicability) and for which no MACT standard has been promulgated under 40 CFR Part 63.

(2) **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 paragraph.

(3) **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.

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

(5) **Hazardous air pollutant (HAP)** - Any air pollutant listed under the FCAA, §112(b).

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

(7) **Maximum achievable control technology (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.

(8) **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.

(9) **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.

(10) **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.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

PERMIT APPLICATION

§§116.110-116.112, 116.114-116.118

STATUTORY AUTHORITY. The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead

smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.110. Applicability.

§116.111. General Application.

§116.112. Distance Limitations.

§116.114. Application Review Schedule.

§116.115. General and Special Conditions.

§116.116. Changes to Facilities.

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

§116.118. Pre-change Qualification.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 1 : PERMIT APPLICATION

§§116.110-116.112, 116.114-116.118

STATUTORY AUTHORITY. The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead

smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.110. Applicability.

(a) Permit to construct. Before any actual work is begun on the facility, 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 either:

(1) obtain a permit under §116.111 of this title (relating to General Application);

(2) satisfy the conditions for a standard permit under the requirements in:

(A) Subchapter F of this chapter (relating to Standard Permits);

(B) Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);

(C) Chapter 332 of this title (relating to Composting); or

(D) Chapter 330, Subchapter N of this title (relating to Landfill Mining);

(3) satisfy the conditions for a flexible permit under the requirements in Subchapter G of this chapter (relating to Flexible Permits); or

(4) satisfy the conditions for exempt facilities under Chapter 106 of this title (relating to Exemptions from Permitting).

(b) Modifications to existing permitted facilities. Modifications to existing permitted facilities may be handled through the amendment of an existing permit or an existing flexible permit.

(c) Exclusion. Owners or operators of affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are not authorized to use:

(1) an exemption under Chapter 106 of this title;

(2) standard permits under Subchapter F of this chapter that do not meet the requirements of Subchapter C of this chapter; or

(3) §116.116(e) of this title (relating to Changes to Facilities).

(d) Change in ownership.

(1) Within 30 days after the change of ownership of a facility permitted under this chapter, the new owner shall notify the commission and certify the following:

(A) the date of the ownership change;

(B) the name, address, phone number, and contact person for the new owner;

(C) an agreement by the new owner to be bound by all permit conditions and all representations made in the permit application and any amendments and alterations;

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

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

(2) The new owner shall comply with all permit conditions and all representations made in the permit application and any amendments and alterations.

(e) Submittal under seal of Texas licensed professional engineer. Applications for permit or permit amendment with an estimated capital cost of the project above \$2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a Texas 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. The estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

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

§116.111. General Application.

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

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

(2) information which demonstrates that all of the following are met.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

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

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

(C) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(D) 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 under FCAA, §111, as amended.

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

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

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

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

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

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification.

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

§116.112. Distance Limitations.

The following facilities must satisfy the following distance criteria.

(1) Lead smelters. New lead smelting plants shall be located at least 3,000 feet from any individual's residence where lead smelting operations have not been conducted before August 31, 1987. This subsection does not apply to:

(A) a modification of a lead smelting plant in operation on or before August 31, 1987;

(B) a new lead smelting plant or modification of a plant with the capacity to produce 200 pounds or less of lead per hour; or

(C) a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations.

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

(A) No permit shall be issued for a new hazardous waste landfill or land treatment facility or an areal expansion of an existing facility if the boundary of the facility or expansion is to be located

within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(B) No permit shall be issued for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within 1/2 mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(C) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subparagraph (B) of this paragraph, distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(D) No permit shall be issued for a new commercial hazardous waste management facility unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment.

(E) The measurement of distances shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the permit application is filed with the commission. The restrictions imposed

by subparagraphs (A) - (C) of this paragraph do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, or a dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(F) The measurement of distances shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be no more than 75 feet from the edge of the proposed hazardous waste management unit.

§116.114. Application Review Schedule.

(a) Review schedule. The executive director shall review permit applications in accordance with the following.

(1) Notice of completion or deficiency. The executive director shall mail written notification informing the applicant that the application is complete or that it is deficient within 90 days of receipt of the application for a new permit, or amendment to a permit or special permit.

(A) If the application is deficient, the notification must state:

(i) the additional information required; and

(ii) the intent of the executive director to void the application if information for a complete application is not submitted.

(B) Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification.

(2) Decision to approve or disapprove the application. The executive director shall mail written notice to the applicant of his decision to approve or not approve the application. If the applicant has provided public notification as required by the executive director, and no requests for public hearing or public meeting on the proposed facility have been received, the executive director shall send notice within:

(A) 180 days of receipt of a completed permit application; or

(B) 150 days of receipt of a permit amendment or special permit amendment.

(3) Refund of permit fee.

(A) If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director for a refund of the permit fee.

(B) The permit fee shall be reimbursed if it is determined by the executive director that the specified period was exceeded without good cause, as provided in Texas Civil Statutes, Article 6252-13b.1, §3.

(b) Voiding of deficient application.

(1) 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 amendment are met in response to any deficiency notification issued by the executive director under the provisions of this section, or §116.131 of this title (relating to Public Notification Requirements).

(2) 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 §116.140 of this title (relating to Applicability).

§116.115. General and Special Conditions.

(a) General and special conditions. Permits, special permits, standard permits, and special exemptions may contain general and special conditions.

(b) General conditions. Holders of permits, special permits, standard permits, and special exemptions shall comply with the following:

(1) the general conditions contained in the permit document if issued or amended prior to August 16, 1994; or

(2) the following general conditions if the permit or amendment is issued or amended on or after August 16, 1994, regardless of whether they are specifically stated within the permit document.

(A) Voiding of permit. A permit or permit amendment under this chapter is automatically void if the permit holder does one of the following:

(i) fails to begin construction within 18 months of date of issuance. The executive director may grant a one-time 18-month extension to the date to begin construction;

(ii) discontinues construction for more than 18 consecutive months prior to completion; or

(iii) fails to complete construction within a reasonable time.

(B) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(C) Start-up notification.

(i) The permit holder shall notify the appropriate air program regional office of the commission prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow representative of the commission to be present at the commencement of operations.

(ii) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(D) Sampling requirements.

(i) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(ii) All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission.

(iii) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(E) Equivalency of methods. The permit holder must 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.

(F) Recordkeeping. The permit holder shall:

(i) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(ii) keep all required records in a file at the plant site. If, however, the facility normally operates unattended, records shall be maintained at the nearest staffed location within Texas specified in the application;

(iii) make the records available at the request of personnel from the commission or any air pollution control program having jurisdiction;

(iv) comply with any additional recordkeeping requirements specified in special conditions attached to the permit; and

(v) retain information in the file for at least two years following the date that the information or data is obtained.

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

(H) Maintenance of emission control. The permitted facilities 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. The permit holder shall provide notification for upsets and maintenance in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and

Recordkeeping Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements).

(I) Compliance with rules.

(i) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit 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.

(ii) 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.

(iii) 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) Special conditions. The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of Title 30 of the Texas Administrative Code.

(2) Special condition for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit under Subchapter F of this chapter (relating to Standard Permits); or

(ii) an exemption under Chapter 106 of this title (relating to Exemptions from Permitting).

(B) Such written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review under

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)); or

(II) the provisions in §116.150 and §116.151 of this title (relating to Nonattainment Review) and §§116.160-116.163 of this title (relating to Prevention of Significant Deterioration Review).

§116.116. Changes to Facilities.

(a) Representations and conditions. The following are the conditions upon which a permit, special permit, or special exemption are issued:

(1) representations with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption; and

(2) any general and special conditions attached to the permit, special permit, or special exemption itself.

(b) Permit amendments.

(1) Except as provided in subsection (e) of this section, the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause:

(A) a change in the method of control of emissions;

(B) a change in the character of the emissions; or

(C) an increase in the emission rate of any air contaminant.

(2) Any person who requests permit amendments must receive prior approval by the executive director or the commission. Applications must be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

(3) Any person who applies for an amendment to a permit to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in §§116.130-116.134, 116.136, and 116.137 of this title (relating to Public Notification and Comment Procedures).

(c) Permit alteration.

(1) A permit alteration is:

(A) a decrease in allowable emissions; or

(B) any change from a representation in an application, general condition, or special condition in a permit that does not cause:

(i) a change in the method of control of emissions;

(ii) a change in the character of emissions; or

(iii) an increase in the emission rate of any air contaminant.

(2) Requests for permit alterations that must receive prior approval by the executive director are those that:

(A) result in an increase in off-property concentrations of air contaminants;

(B) involve a change in permit conditions; or

(C) affect facility or control equipment performance.

(3) The executive director shall be notified in writing of all other permit alterations not specified in paragraph (2) of this subsection.

(4) A request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(3) of this title.

(5) Permit alterations are not subject to the requirements §116.111(3) of this title.

(d) Exemption under Chapter 106 of this title (relating to Exemptions from Permitting) in lieu of permit amendment or alteration.

(1) A permit amendment or alteration is not required if the changes to the permitted facility qualify for an exemption under Chapter 106 of this title unless prohibited by permit condition as provided in §116.115 of this title (relating to General and Special Conditions).

(2) All exempted changes to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.

(e) Changes to qualified facilities.

(1) Notwithstanding any other subsection of this section, a physical or operational change may be made to a qualified facility if it can be determined that the change does not result in:

(A) a net increase in allowable emissions of any air contaminant; and

(B) the emission of any air contaminant not previously emitted.

(2) In making the determination in paragraph (1) of this subsection, the effect on emissions of the following shall be considered:

(A) any air pollution control method applied to the qualified facility;

(B) any decreases in allowable emissions from other qualified facilities at the same commission air quality account number that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(C) any decrease in actual emissions from other qualified facilities at the same commission air quality account number that are not included in subparagraph (B) of this paragraph.

(3) The determination in paragraph (1) of this subsection shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical

or operational change would result in emissions of a air contaminant category or compound above the allowable emissions for that air contaminant category or compound, the amount above the allowable emissions must be offset by an equivalent decrease in emissions at the same facility or a different facility. In making this offset, the following applies.

(A) The offset shall be based on the same time periods (e.g., hourly and annual rates) as the allowable emissions for the facility at which the change will occur.

(B) Emissions of different compounds within the same air contaminant category may be interchanged.

(C) For allowable emissions for individual compounds, any interchange shall adjust the emission rates for the different compounds in accordance with the ratio of the effects screening levels of the compounds.

(D) For allowable emissions for air contaminant categories, interchanges shall use the unadjusted emission rates for the different compounds.

(E) The effects screening level shall be determined by the executive director.

(F) An air contaminant category is a group of related compounds, such as volatile organic compounds, particulate matter, nitrogen oxides, and sulfur compounds.

(4) Persons making changes to qualified facilities under this subsection shall comply with the applicable requirements of §116.117 of this title (relating to Documentation and Notification of Changes to Qualified Facilities) and §116.118 of this title (relating to Pre-change Qualification).

(5) As used in this subsection, the term "physical and operational change" does not include:

(A) construction of a new facility; or

(B) changes to procedures regarding monitoring, determination of emissions and recordkeeping that are required by a permit.

(6) Additional air pollution control methods may be implemented for the purpose of making a facility a qualified facility. The implementation of any additional control methods to qualify a facility shall be subject to the requirements of this chapter. The owner or operator shall:

(A) utilize additional control methods that are as effective as best available control technology (BACT) required at the time the additional control methods are implemented; or

(B) demonstrate that the additional control methods, although not as effective as BACT, were implemented to comply with a law, rule, order, permit, or implemented to resolve a documented citizen complaint.

(7) For purposes of this subsection and §116.117 of this title, the following subparagraphs apply.

(A) Intraplant trading means the consideration of decreases in allowable and actual emissions from other qualified facilities in accordance with paragraph (2) of this subsection.

(B) The allowable emissions from facilities that were never constructed shall not be used in intraplant trading.

(C) The decreases in allowable and actual emissions shall be based on emission rates for the same time periods (e.g., hourly and annual rates) as the allowable emissions for the facility at which the change will occur and for which an intraplant trade is desired.

(D) Actual emissions shall be based on data that is representative of the emissions actually achieved from a facility during the relevant time period (e.g., hourly or annual rate).

(8) The existing level of control may not be lessened for a qualified facility.

(f) Use of credits. Notwithstanding any other subsection of this section, discrete emission reduction credits may be used to exceed permit allowables as described in §101.29(d)(4)(v) of this title (relating to Emission Credit Banking and Trading) if all applicable conditions of §101.29 of this title are met. This subsection does not authorize any physical changes to a facility.

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

(a) Persons making changes under §116.116(e) of this title (relating to Changes to Facilities) shall maintain documentation at the plant site demonstrating that the changes satisfy §116.116(e) of this title. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain the documentation. The documentation shall be made available to representatives of the commission upon request. The documentation shall include:

- (1) quantification of all emission increases and decreases associated with the physical or operational change;
- (2) a description of the physical or operational change;
- (3) a description of any equipment being installed; and

(4) sufficient information as necessary to show that the project will comply with §116.150 and §116.151 of this title (relating to Nonattainment Review) and §§116.160-116.163 of this title (relating to Prevention of Significant Deterioration Review) and with Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(b) Persons making such changes to qualified facilities shall comply with the following notification requirements.

(1) Annual report. For changes to qualified facilities when there is no intraplant trading under §116.116(e)(2) of this title, an annual report shall be submitted to the appropriate regional office of the commission by August 1 of each year. The report shall include all changes made under §116.116(e) during the immediately preceding annual period July 1-June 30. This reporting period and the due date may be changed with the agreement of the commission's regional office. The annual report shall contain a PI-E form for each change. The report need not include changes previously submitted by PI-E form to the commission under paragraphs (2) or (3) of this subsection or which have been incorporated into the permit for the facility.

(2) Post-change notification. Post-change notification shall be required for changes to qualified facilities for which there is intraplant trading below the reportable limit. The notification shall be submitted on a PI-E form to the commission's New Source Review Permits Division within 30 days after the change occurs.

(3) Pre-change notification only. Pre-change notification shall be required if a physical or operational change at a qualified facility will affect compliance with a permit special condition. The notice shall be made to the commission prior to the change. It shall identify the affected special condition and indicate the change needed or the desire to remove the special condition from the permit. The permit holder is relieved from complying with the permit special condition upon the filing of the notice, provided the change complies with §116.116(e) of this title.

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

(5) Reportable limit. The executive director shall establish reportable limits. A reportable limit is either:

(A) an emission rate that is adjusted based on a factor that accounts for a ratio of the effects screening levels of the different compounds and the difference in location of emissions involved in an intraplant trade; or

(B) an emission rate that results in a sum total of modeled ground level concentration for the account that shall not exceed two times the effects screening level at any point off property.

(c) For facilities that have received a preconstruction permit, all changes for which the notification procedure of subsection (b) of this section has been used shall be incorporated into the permit when the permit is amended or renewed.

(d) Nothing in this section shall limit the applicability of any federal requirement.

§116.118. Pre-change Qualification.

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

(1) the facility is a qualified facility on the basis of best available control technology and the requirement for the facility type has not been previously established by the executive director; or

(2) the facility does not have allowable emissions established for an air contaminant relevant to the change in a maximum allowable emissions rate table, PI-8 form, or PI-E form.

(b) The pre-change qualification shall be made by submitting a PI-E form to the commission's New Source Review Permits Division. The facility shall be qualified in accordance with the information contained in the PI-E form after receipt of written notification from the commission that there are no objections, or 45 days after the PI-E form is received by the commission, whichever occurs first. The pre-change qualification may be submitted at the same time as a pre-change notification under §116.117(b) of this title or at any other time prior to making a change to a qualified facility.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

COMPLIANCE HISTORY

§§116.120-116.126

STATUTORY AUTHORITY. The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead

smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.120. Applicability.

§116.121. Exemptions.

§116.122. Contents of Compliance History.

§116.123. Effective Dates.

§116.124. Public Notice of Compliance History.

§116.125. Preservation of Existing Rights and Procedures.

§116.126. Voidance of Permit Applications.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 2 : COMPLIANCE HISTORY

§§116.120-116.126

STATUTORY AUTHORITY. The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead

smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.120. Applicability.

As part of the review of a construction permit, amendment, or renewal:

(1) The executive director shall compile a compliance history for:

(A) the existing site when the application is for a new permit, amendment, or renewal at the existing site;

(B) a site with similar facilities, if any, owned or operated by the applicant in Texas when the application is for a new facility at a new site. The commission may require the applicant to indicate which facilities the applicant considers to be similar.

(2) The applicant shall provide the commission with a compliance history for sites with similar facilities, if any, owned or operated by the applicant in other states when:

(A) the application is for a new facility at a new site; and

(B) the applicant does not own or operate similar facilities in Texas.

(3) 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:

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

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

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

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

§116.121. Exemptions.

The compliance history is not required if the total increased actual emissions of any specific air contaminant (e.g., benzene, arsenic, etc.) at the site will be accompanied by greater than a 1.1 to 1 reduction of the same specific air contaminant at the site.

§116.122. Contents of Compliance History.

(a) The compliance history shall include all of the following compliance events and associated information involving the facility that is the subject of the permit application:

(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;

(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.

(b) 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 shall not be included in the compliance history where:

(1) the violations occurred after the effective date of this rule, and have been the subject of a commission administrative enforcement action, and the commission classified the violations as not being subject to compliance history review; or

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

(A) the commission did not classify the 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 the violations.

(c) The commission may request an analysis of the significance 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.

§116.123. Effective Dates.

(a) The requirements under §§116.120-116.126 of this title (relating to Compliance History) apply only to applications filed on or after December 9, 1992.

(b) For applications filed:

(1) before June 1, 1993, neither the commission nor the applicant is required to include compliance events occurring before June 1, 1988;

(2) 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.

§116.124. Public Notice of Compliance History.

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

§116.125. Preservation of Existing Rights and Procedures.

Nothing in this subchapter (concerning Compliance History) shall:

- (1) 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);
- (2) diminish the rights of any person to request and obtain compliance history information from the commission;
- (3) limit the authority of the commission to request and consider any other information that is relevant to the application under the law; or
- (4) create any right in third parties which did not exist before the effective date of this subchapter.

§116.126. Voidance of Permit Applications.

If an applicant does not submit compliance history information within 180 days after written request from the executive director, the commission will void the permit application. The applicant shall also forfeit the fees associated with the permit application. A new permit application shall be required for further consideration by the commission.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 3 : PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§§116.130-116.134, 116.136, 116.137

STATUTORY AUTHORITY. The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead

smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.130. Applicability.

(a) Any person who applies for a new permit or permit renewal shall be required to publish notice of the intent to construct a new facility or modify an existing facility or renew a permit. The notice shall be published in a newspaper in general circulation in the municipality where the facility is located or to be located. Any person who applies for a permit amendment shall provide public notification as required by the executive director.

(b) Upon written request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director, or designated representative may exempt the relocation of such facility from the 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.

(c) Applications subject to the requirements of Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction, are subject to the public notice requirements of this section.

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

(b) Availability of application for review. The executive director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the commission's 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 under §116.132 of this title.

§116.132. Public Notice Format.

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

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

(6) preliminary determination of the executive director to issue or not issue the permit (for permits subject to the FCAA, Title I, Part C or D, or to 40 Code of Federal Regulations 51.165(b));

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

(8) - (9) (No change.)

(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 under 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, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.1205(g). Schools not governed by the provisions of 19 TAC §89.1205 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 §89.1205(a) under 19 TAC §89.1205(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) - (8) (No change.)

(d) Exemptions from alternate language notification. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of subsection (c) of this section.

§116.133. Sign Posting Requirements.

(a) At the applicant's expense, a sign or signs shall be placed at the site of the proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:

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

(5) signs shall include the words "Texas Natural Resource Conservation Commission," and the address of the appropriate commission regional office in no less than one-inch boldface capital lettering and 3/4-inch boldface lower case lettering; and

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

(b) (No change.)

(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) (No change.)

(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 the Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) or if either school has waived out of such a required bilingual education program under the provisions of 19 TAC §89.1205(g). Schools not governed by the provisions of 19 TAC §89.1205(a) 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 §89.1205(a) under 19 TAC §89.1205(g), the alternate language signs 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) - (4) (No change.)

(g) Exemption from alternate language sign posting. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of subsection (f) of this section.

§116.134. Notification of Affected Agencies.

When newspaper notices are published in accordance with §116.132 of this title (relating to Public Notice Format), the permit applicant shall furnish a copy of such notices and date of publication to the commission 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 §116.133 of this title (relating to Sign Posting Requirements) have been posted in accordance with the provisions of that section.

§116.136. Public Comment Procedures.

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

(b) (No change.)

§116.137. Notification of Final Action by the Commission.

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

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 4 : PERMIT FEES

§§116.140, 116.141, 116.143

STATUTORY AUTHORITY. The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead

smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.140. Applicability.

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

§116.141. Determination of Fees.

(a) (No change.)

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

(1) If the estimated capital cost of the project is less than \$300,000 or if the project consists of new facilities controlled and operated directly by the federal government and the federal regulations for Prevention of Significant Deterioration (PSD) Review do not apply, the fee is \$450. The provisions of subsections (c) and (d) of this section do not apply to a project consisting of new facilities controlled and operated directly by the federal government.

(2) (No change.)

(c) 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 not currently authorized under this chapter;

(B) - (G) (No change.)

(2) (No change.)

(d) - (e) (No change.)

§116.143. Payment of Fees.

All permit fees will be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission or TNRCC and delivered with the application for permit or amendment to the TNRCC, P. O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the agency will begin examination of the application.

(1) (No change.)

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

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 6 : PREVENTION OF SIGNIFICANT DETERIORATION REVIEW

§116.160, §116.161

STATUTORY AUTHORITY. The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead

smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.160. Prevention of Significant Deterioration Requirements.

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

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

§116.161. 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) under 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 a 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.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 7 : EMISSION REDUCTIONS : OFFSETS

§116.170, §116.174

STATUTORY AUTHORITY. The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead

smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.170. 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 §116.12 of this title (relating to Nonattainment Review Definitions) shall be used in areas designated as nonattainment areas.

(2) (No change.)

(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) (No change.)

(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) (No change.)

(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.

§116.174. 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 §116.170 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 §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas), §116.151 of this title (relating to New Major Source or Major Modification in Nonattainment Areas Other Than Ozone), §116.160 of this title (relating to Prevention of Significant

Deterioration Requirements), and §116.162 of this title (relating to 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.

**SUBCHAPTER C : HAZARDOUS AIR POLLUTANTS: REGULATIONS GOVERNING
CONSTRUCTED OR RECONSTRUCTED MAJOR SOURCES**

(FCAA, §112(G), 40 CFR PART 63)

§§116.180-116.183

STATUTORY AUTHORITY. The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which

provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.180. Applicability.

(a) The provisions of this subchapter implement FCAA, §112(g), Modifications, and 40 Code of Federal Regulations Part 63, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources, Subpart B, Requirements for Control Technology, as amended December 27, 1996. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to this subchapter are those sources for which EPA has not promulgated a MACT standard under 40 CFR Part 63. For purposes of this subchapter:

(1) “Construct a major source” means the following:

(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 this subchapter 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 Title 40 Code of Federal Regulations (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 are predicated will be construed by the executive director as applicable requirements under FCAA, §504(a), and either have been incorporated into any existing permit issued under Chapter 122 of this title (relating to Federal Operating Permits) for the affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) or will be incorporated into such permit upon issuance.

(2) “Reconstruct a major source” means 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 this subchapter.

(b) The requirements of this subchapter apply to an owner or operator of an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) who constructs or reconstructs on or after June 29, 1998, the effective date of §112(g)(2)(B), unless the affected 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 affected source has received all necessary air quality permits for such construction or reconstruction project before the effective date of §112(g)(2)(B). Administratively complete applications submitted prior to June 29, 1998, are not subject to the requirements of this subchapter.

(c) Affected sources as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to the requirements of this subchapter are not eligible to use a standard permit under Subchapter F of

this chapter (relating to Standard Permits) unless the terms and conditions of the specific standard permit meet the requirements of this subchapter.

§116.181. 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 under 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 under 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.

§116.182. 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 proposed affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall submit a permit application as described in §116.110 of this title (relating to Applicability).

§116.183. Public Notice Requirements.

Proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with the public notice requirements contained in §116.130 of this title (relating to Applicability).

SUBCHAPTER D : PERMIT RENEWALS

§§116.310-116.314

STATUTORY AUTHORITY. The repeals are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal

operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.310. Notification of Permit Holder.

§116.311. Permit Renewal Application.

§116.312. Public Notification and Comment Procedures.

§116.313. Renewal Application Fees.

§116.314. Review Schedule.

SUBCHAPTER D : PERMIT RENEWALS

§§116.310-116.314

STATUTORY AUTHORITY. The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal

operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.310. Notification of Permit Holder.

The executive director shall provide written notice to the permit holder that the permit is scheduled for review. Such notice must be provided by certified or registered United States mail no less than 180 days prior to the expiration of the permit. The notice must specify the procedure for filing an application for review and the information to be included in the application. Under Texas Civil Statutes, Article 9027, the commission shall exempt a permit holder 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.

§116.311. Permit Renewal Application.

(a) In order to be granted a permit renewal, the permit holder 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, unless otherwise authorized for a qualified facility;

(2) the facility meets the requirements of any applicable New Source Performance Standards as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA under the authority of the FCAA, §111, as amended;

(3) the facility meets the requirements of any applicable emission standard for hazardous air pollutants as listed under Title 40 CFR Part 61, promulgated by EPA under the authority of the FCAA, §112, as amended; and

(4) the facility meets the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(5) the facility meets the requirements of Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(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) A compliance history review must be conducted in accordance with §§116.121-116.126 of this title (relating to Compliance History). The renewal application must demonstrate that the facility is or has been in substantial compliance with the provisions of the TCAA and the terms of the existing permit. Failure to demonstrate substantial compliance shall result in the renewal not being 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 executive director 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) An application for renewal must be submitted within 90 days prior to expiration of the permit or the permit will expire. The executive director may extend the time period for submitting an application.

(e) Any permit issued:

(1) before December 1, 1991, is subject for review 15 years after the date of issuance;

(2) on or after December 1, 1991, is subject for review every ten years after the date of issuance.

(3) at nonfederal sources on or after December 1, 1991, may, for cause, contain a provision requiring renewal between five and ten years.

§116.312. Public Notification and Comment Procedures.

(a) The executive director shall mail a written notice to the permit holder within 30 days after receipt of a complete application. The notice will confirm receipt of the application and shall require the applicant to provide public notice of the application for permit renewal in accordance with Subchapter B of this chapter (relating to New Source Review Permits).

(b) The sign heading required under §116.133(a)(2) of this title (relating to Sign Posting Requirements) shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT."

§116.313. Renewal Application Fees.

(a) The fee for renewal is based on the total annual allowable emissions from the permitted facility to be renewed, according to the following table. Figure: 30 TAC §116.313(a)

RENEWAL FEE TABLE*

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

Minimum fee: \$300

Maximum fee: \$10,000

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

(b) Fees are due and payable at the time the renewal application is filed. No fee will be accepted before the permit holder has been notified by the commission that the permit is scheduled for review. 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.

§116.314. Review Schedule.

(a) Renewal of permit. The executive director shall renew a permit and notify the permit holder in writing if it is determined that the facility meets the requirements of this subchapter.

(b) Denial of renewal. Prior to denial, the executive director shall provide notice to the permit holder with a report which describes the basis for denial.

(1) If denial is based on failure to meet the requirements of §116.311(a) or (b) of this title (relating to Permit Renewal Application), the report shall establish a schedule for compliance with the renewal requirements.

(A) The report shall be forwarded to the permit holder no later than 180 days after the commission receives a completed application.

(B) The permit shall be renewed if the requirements are met according to the schedule specified in the report. The executive director shall notify the permit holder in writing of the permit renewal.

(2) If denial is based on failure to maintain substantial compliance with the TCAA or the terms of the existing permit under §116.311(c) of this title, the renewal denial shall be final. The executive director shall notify the permit holder in writing of the denial.

(c) Contested case hearing. After failure to satisfy the commission requirements for corrective action by the deadline specified in the executive director's report, the applicant shall show cause in a contested case proceeding why the permit should not expire. The proceeding will be conducted under the APA and Chapters 1, 55, and 80 of this title (relating to Purpose of Rules, General Provisions; Request for Contested Case Hearings; Public Comment; and Contested Case Hearings).

(d) Effective date of existing permit. An existing permit shall remain effective:

(1) until it is renewed;

(2) until the deadline specified in the executive director's report to the permit holder;

(3) during the course of a contested case hearing if the hearing extends beyond the expiration date; or

(4) until a date specified in any commission order entered following a contested case hearing.

SUBCHAPTER F : STANDARD PERMITS

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

STATUTORY AUTHORITY. The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal

operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.610. Applicability.

(a) Under 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, project means the construction or modification of a facility or a group of facilities submitted under the same registration claim.

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

(3) the proposed project must comply with the applicable provisions of the FCAA, §111 (concerning New Source Performance Standards) as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA;

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

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

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

(b) - (c) (No change.)

(d) Any project involving a proposed affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)). Affected sources subject to Subchapter C of this chapter may use a standard permit under this subchapter only if the terms and conditions of the specific standard permit meet the requirements of Subchapter C of this chapter.

§116.611. Registration Requirements.

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

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

(b) - (c) (No change.)

§116.614. Standard Permit Fees.

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

§116.615. General Conditions.

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

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

(2) (No change.)

(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under §116.110 of this title (relating to Applicability) shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.

(4) - (7) (No change.)

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, the 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.

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

Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements).

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

§116.617. Standard Permits for Pollution Control Projects.

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

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

(5) 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 under §116.110 of this title (relating to Applicability) or §116.116 of this title (relating to Changes to Facilities) prior to utilizing any production capacity increase from a pollution control project required by any governmental standard that:

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

(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 under §116.110 or §116.116 of this title.

(6) - (7) (No change.)

(8) If the project, without consideration of any other increases or decreases not related to the project, will result in a significant net increase in emissions of any criteria pollutant, a person claiming this

standard permit shall submit, with the registration, information sufficient to demonstrate that the increase will meet the conditions of subparagraph (A) of this paragraph.

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

(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.

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

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

(a) Emission specifications.

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

(4) New or modified internal combustion reciprocating engines or gas turbines permitted under this standard permit shall satisfy all of the requirements of §106.512 of this title (relating to Stationary Engines and Turbines (Previously SE 6)), except that registration using the Form PI-7 or PI-8 shall not be required. Emissions from engines or turbines shall be limited to the amounts found in §106.4(a)(1) of this title (relating to Requirements for Exemption from Permitting).

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

(13) Appropriate documentation shall be submitted to demonstrate that compliance with the Prevention of Significant Deterioration (PSD) and nonattainment new source review provisions of the FCAA, Parts C and D, and regulations promulgated thereunder, and with Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are being met. The oil and gas facility shall be required to meet the requirements of Subchapter B of this chapter (relating to New Source Review Permits) instead of this subchapter if a PSD or nonattainment permit or a review under Subchapter C of this chapter is required.

(14) Documentation shall be submitted to demonstrate compliance with applicable New Source Performance Standards (NSPS, 40 CFR Part 60).

(15) Documentation shall be submitted to demonstrate compliance with applicable National Emission Standards for Hazardous Air Pollution (NESHAP, 40 CFR Part 61).

(16) Documentation shall be submitted to demonstrate compliance with applicable maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed in Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(17) New and increased emissions shall not cause or contribute to a violation of any National Ambient Air Quality Standard or regulation property line standards as specified in Chapters 111, 112, and 113 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter; Control of Air Pollution from Sulfur Compounds; and Control of Air Pollution from Toxic Materials). Engineering judgment and/or computerized air dispersion modeling may be used in this demonstration. To show compliance with §116.610(a)(1) of this title (relating to Applicability) for H₂S emissions from process vents, ten milligrams per cubic meter shall be used as the "L" value instead of the value represented by §116.610(a)(1) of this title.

(18) Fuel for all combustion units and flare pilots shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf), or field gas. If field gas contains more than 1.5 grains of H₂S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H₂S and total sulfur content, which demonstrate that the annual SO₂ emissions from the facility do not exceed the limitations listed in the standard permit registration. If a flare is the only combustion unit on a property, the operator shall not be required to maintain such records on flare pilot gas.

(b) Control requirements.

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

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

(2) (No change.)

(c) Inspection requirements.

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

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is detected to exceed a VOC concentration greater than 10,000 parts per million by volume (ppmv) above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound for all components. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.5 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 pounds per square inch (psi) (five kilopascals (Kpa)) below ambient pressure, then these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by the agency representatives, the EPA, or any other air pollution agency having jurisdiction. All piping and valves two inches nominal size and smaller, unless subject to federal NSPS requiring a fugitive VOC emissions leak detection and repair program or Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds), are also exempt from this requirement.

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

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Air Quality, New Source

Review Permits Division that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

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

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

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

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

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

(K) (No change.)

(3) (No change.)

(d) Approved test methods.

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

(3) Proper operation of any condenser used as a VOC emissions control device to comply with subsection (a)(5) of this section shall be tested to demonstrate compliance with the minimum control efficiency. Sampling shall occur within 60 days after start-up of new or modified facilities. The permittee shall contact the Engineering Services Section, Office of Compliance and Enforcement 45 days prior to sampling for approval of sampling protocol. The appropriate regional office in the region where the source is located shall also be contacted 45 days prior to sampling to provide them the opportunity to view the sampling. Neither the regional office nor the Engineering Services Section, Office of Compliance and Enforcement personnel are required to view the testing. Sampling reports which comply with the provisions of the "TNRCC Sampling Procedures Manual," Chapter 14 ("Contents of Sampling Reports," dated January 1983 and revised July 1985), shall be distributed to the appropriate regional office, any local programs, and the Engineering Services Section, Office of Compliance and Enforcement.

(e) Monitoring and recordkeeping requirements.

(1) If the operator elects to install and maintain ambient H₂S property line monitors to comply with subsection (a)(11) of this section, the monitors shall be approved by the Engineering Services Section, Office of Compliance and Enforcement office in Austin, and shall be capable of detecting and alarming at H₂S concentrations of ten ppmv. Operations personnel shall perform an initial on-site inspection of the facility within 24 hours of initial alarm and take corrective actions as listed in subsection (c)(3)(A)-(C) of this section within eight hours of detection of a leak.

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

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

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

§116.621. Municipal Solid Waste Landfills.

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

(1) (No change.)

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

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

(F) any project which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration review), Part D (nonattainment review) and regulations promulgated thereunder, or is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources

(FCAA, §112(g) 40 CFR Part 63)) shall be subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(3) (No change.)

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

(A) (No change.)

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

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

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

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

(v) boilers, heaters, or other combustion units, but not including stationary internal combustion engines or turbines, that satisfy all of the requirements of Chapter 106, Subchapter A of this title and §106.183 of this title (relating to Boilers, Heaters, or Other Combustion Devices (Previously SE 7)).

(C) The active GCCS may be capped or removed only if, in addition to the requirements listed in 40 CFR, §60.752(b)(2)(v), the MSWLF is permanently closed under §§330.250-330.256 of this title (relating to Closure and Post-closure).

(5) (No change.)

(6) High volume air sampling for net ground level concentrations of total particulate matter shall be performed upon request of the executive director or a designated representative. Each test shall consist of at least one upwind and one downwind sample taken simultaneously. The tests shall be performed during normal operations. A monitoring plan for high volume sampling shall be developed in accordance with the Office of Air Quality Management Plan, Appendix I (EPA Requirements for Quality Assurance Project

Plans, dated February 1995) and the "TNRCC Sampling Procedures Manual," Chapter 11 (dated January 1983 and revised July 1985), and shall require approval by the executive director or a designated representative prior to sampling. The executive director or a designated representative shall be afforded the opportunity to observe all such sampling equipment, operations, and records upon request.

(7) GCCS components (compressor seals, pipeline valves, pressure relief valves in gaseous service, flanges, and pump seals) at an MSWLF or MSW facility, where the total of all estimated uncontrolled fugitive emissions from all components is greater than ten tons per year, shall be inspected and maintained under the requirements of §116.620(c)(1)(A)-(J) of this title (relating to Installation and/or Modification of Oil and Gas Facilities), with the following changes and additions.

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

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

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

(B) (No change.)

SUBCHAPTER G : FLEXIBLE PERMITS

§§116.710, 116.711, 116.714, 116.715, 116.721, 116.730, 116.740, 116.750

STATUTORY AUTHORITY. The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), including, §382.002, which provides the policy of the State of Texas and of the TCAA to safeguard the air of the state; §382.003, which provides definitions of terms used throughout the TCAA; §382.011, which provides the commission with the powers necessary to control the quality of the state's air; §§382.015-382.017, which provide for power to enter property; monitoring requirements, examination of records; and the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.021 and §382.022, which provide for sampling methods and procedures; and investigations; §§382.030-382.032, which provide for delegation of hearing powers; notice of hearings; and appeal of commission actions; §382.040 and §382.041, which provide for public records and submission of confidential information; §382.051, which provides the commission the authority to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0511-382.0518, which provide authority for the commission to consolidate new source review authorizations and make changes to permits; determine whether a proposed change is a modification; establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; provide notices to state senators and representatives; to determine administrative completeness of applications; and to require persons to obtain permits for construction of new facilities or modifications to existing facilities; §382.052 and §382.053, which provide for consideration of impacts and nuisance conditions near schools; and distance limitations for lead smelting plants; §382.0541 and §382.0542, which provide for administration and enforcement of federal

operating permits; issuance of federal operating permits and appeal of delays; §382.055, which provides for renewals of preconstruction permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for permits; §382.057, which provides authority for exemptions from permitting as well as standard permits; §382.058, which provides limitations on exemptions for construction of certain concrete plants; §382.0591, which provides for denial of applications for permits if assistance has been provided by former or current employees; §382.061, which allows the commission to delegate certain powers to the executive director; §382.062, which allows the commission to charge fees for certain actions; §382.085, which prohibits unauthorized emissions; and under Texas Water Code, including §5.103, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and other laws of this state; §5.105, which provides the commission with the authority to establish and approve commission policy; §5.115 and §5.116, which provide for who may be an affected person; notice of applications; and recess of hearings; §5.121 and §5.122, which provide for public information; and delegation of uncontested matters to the executive director; §5.234, which provides for applications and other documents; §5.351, which provides for judicial review of commission acts; §5.355, which provides for appeal of district court judgment; and §§7.001-7.358, which provide for enforcement. The rules are readopted under Article IX, §167, General Appropriations Act, 75th Legislature, 1997.

§116.710. Applicability.

(a) Flexible permit. A person may obtain a flexible permit which allows for physical or operational changes as provided by this subchapter as an alternative to obtaining a new source review permit under §116.110 of this title (relating to Applicability), or in lieu of amending an existing permit under §116.116 of this title (relating to Amendments and Alterations). A person may obtain a flexible permit under §116.711 of this title (relating to Flexible Permit Application) for a facility, group of facilities, or account before any actual work is begun, provided however:

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

(b) Change in ownership. The new owner of a facility, group of facilities, or account shall comply with §116.110(c) of this title, provided however, that all facilities covered by a flexible permit must change ownership at the same time and to the same person, or both the new owner and existing permit holder must obtain a permit alteration allocating the emission caps or individual emission limitation prior to the transfer of the permit by the commission. After the sale of a facility, or facilities, but prior to the transfer of a permit requiring a permit alteration, the original permit holder remains responsible for ensuring compliance with the existing flexible permit and all rules and regulations of the commission.

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

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

§116.711. Flexible Permit Application.

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

(1) Protection of public health and welfare. The emissions from the proposed facility, group of facilities, or account as determined under §116.716 of this title (relating to Emission Caps and Individual Emission Limitations), 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 flexible permit for construction or modification of any facility, group of facilities, or account within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility, group of facilities, or account may have on the individuals attending these school facilities.

(2) Measurement of emissions. The proposed facility, group of facilities, or account will have provisions for measuring the emission of air contaminants as determined by the executive director. 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, group of facilities, or account will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility on a proposed facility, group of facilities, or account basis. Control technology beyond BACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities or account basis, provided however, that the existing level of control may not be lessened for any facility. For new facilities and proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), the use of BACT shall be demonstrated for the individual facility or affected source.

(4) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR), Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by the EPA under authority granted under the FCAA, §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under the FCAA, §112, as amended.

(6) NESHAPS for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable MACT standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

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

(8) Nonattainment review. If the proposed facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements under the undesignated

head concerning nonattainment review in Subchapter B of this chapter (relating to New Source Review Permits).

(9) Prevention of Significant Deterioration (PSD) review. If the proposed facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements under the undesignated head concerning PSD in Subchapter B of this chapter.

(10) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's New Source Review Permits Division to determine the air quality impacts from the facility, group of facilities, or account.

(11) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the proposed source is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), it shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(12) Application content. In addition to any other requirements of this chapter, the applicant shall:

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

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

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

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

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

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

§116.714. Application Review Schedule.

The flexible permit application will be reviewed by the commission in accordance with §116.114 of this title (relating to Application Review Schedule).

§116.715. General and Special Conditions.

(a) Flexible permits may contain general and special conditions. The holders of flexible permits shall comply with any and all such conditions. Upon a specific finding by the executive director that an increase of a particular air contaminant could result in a significant impact on the air environment, or could cause the facility, group of facilities, or account to become subject to review under §116.150 and §116.151 and §§116.160-116.163 of this title (relating to Nonattainment Review or Prevention of Significant Deterioration Review) or Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), the permit may include a special condition which requires the permittee to obtain written approval from the executive director before constructing a facility under a standard permit or an exemption under Chapter 106 of this title (relating to Exemptions from Permitting).

(b) (No change.)

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

(1) Voiding of permit. A flexible permit or flexible permit amendment under this subchapter is automatically void if the holder fails to complete construction as specified in the flexible permit. Upon request, the executive director may grant a one time 12-month extension of the date to complete construction.

This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

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

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

(4) Sampling requirements. If sampling of stacks or process vents is required, the flexible permit holder shall contact the commission's Engineering Services Section, Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission. The flexible permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

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

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

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

(9) Maintenance of emission control. The facilities covered by the flexible permit shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working

order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements).

(10) Compliance with rules. Acceptance of a flexible permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all Rules, Regulations, and Orders of the commission 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 flexible permit condition are applicable, then 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 flexible permit.

(d) (No change.)

§116.721. Amendments and Alterations.

(a) Flexible permit amendments. All representations with regard to construction plans and operation procedures in an application for a flexible permit, as well as any general and special provisions attached, become conditions upon which the subsequent flexible permit is issued. It shall be unlawful for any person to

vary from such representation or flexible permit provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions, unless application is made to the executive director to amend the flexible permit in that regard and such amendment is approved by the executive director or commission. Applications to amend a flexible permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.711 of this title (relating to Flexible Permit Application).

(b) Flexible permit alterations.

(1) (No change.)

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

(3) (No change.)

(c) (No change.)

(d) Exemption under Chapter 106 of this title (relating to Exemptions from Permitting) in lieu of permit amendment or alteration.

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

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

§116.730. Compliance History.

As part of a flexible permit review, or the review of an amendment of a flexible permit, or renewal of an existing flexible permit, the provisions found in §§116.120-116.126 of this title (relating to Compliance

History) shall be applicable to the facility, group of facilities, or account being permitted, amended, or renewed.

§116.740. Public Notice and Comment.

(a) Any person who applies for a flexible permit or an amendment to a flexible permit shall comply with the provisions in §§116.130-116.134, 116.136, 116.137 of this title (relating to Public Notification and Comment Procedures).

(b) Any person who applies for an amendment to a flexible permit regarding an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in §§116.130-116.134, 116.136, and 116.137 of this title.

§116.750. Flexible Permit Fee.

(a) (No change.)

(b) Fee amounts. The fee to be remitted with a flexible permit application shall be based on the total annual allowable emissions from the permitted facility, group of facilities, or account for which the flexible

permit is being sought. The fee shall be \$25 per ton with the minimum fee being \$450 and the maximum fee \$75,000. For flexible permit amendments, the fee shall be calculated based on \$25 per ton for the incremental emission increase with the minimum fee being \$450 and the maximum fee being \$75,000.

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

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