

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §122.10, concerning General Definitions, §122.130, concerning Initial Application Due Dates, §122.134, concerning Complete Application, §122.201, concerning Initial Permit Issuance, §122.501, concerning General Operating Permits, §122.503, concerning Application Revisions for Changes at a Site, §122.504, concerning Application Revisions When a General Operating Permit is Revised or Repealed, §122.506, concerning Public Notice for General Operating Permits, §122.508, concerning Notice and Comment Hearings for General Operating Permits, and new §122.509, concerning Public Announcement for General Operating Permits, and new §122.510, concerning General Operating Permits Adopted by the Commission. Section 122.506 is adopted with changes to the proposed text as published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 8987). The remaining sections are adopted without changes and will not be republished.

EXPLANATION OF THE ADOPTED RULES

This adoption establishes new procedures for developing general operating permits (GOPs) under 30 TAC Chapter 122 (Chapter 122), concerning Federal Operating Permits. This adoption will also amend the Chapter 122 full program application schedule for GOPs. Chapter 122 was originally adopted September 20, 1993, and revised to be effective November 10, 1997. Chapter 122 is based on Title 40 Code of Federal Regulations Part 70 (40 CFR 70), which was promulgated by the United States Environmental Protection Agency (EPA) to establish the minimum elements of the federal operating permits program, as required by Title V of the Federal Clean Air Act Amendments of 1990 (FCAA). The goal of the federal operating permits program is to provide a compliance and

enforcement tool by codifying all applicable requirements for the control of air pollution at a specific major source site into an operating permit.

GOPs are an alternate permitting mechanism provided for in Chapter 122, consistent with 40 CFR 70 requirements that authorize the operation of multiple sites that are similar in terms of operations, processes, and emissions. Four GOPs are available for oil and gas industry sites (§§122.511-122.514) and one GOP is available for the bulk fuel terminal industry sites (§122.515). One GOP (§122.516) is available for the owners or operators of sites that have only site-wide requirements. These GOPs have been a very successful mechanism for streamlining the permitting of certain sites subject to Chapter 122.

As explained in the proposal, the existing GOPs were adopted through the rulemaking process consistent with the requirements of the Texas Administrative Procedure Act (APA) and the requirements of the Texas Clean Air Act (TCAA), §382.017 for rulemaking. Additionally, 40 CFR 70 requires a 30-day public comment period (including an opportunity to request a notice and comment hearing), an affected state review, a 45-day EPA review, and a 60-day public petition period. Affected states are defined in Chapter 122 as Louisiana, Arkansas, Oklahoma, New Mexico, Kansas, or Colorado. Affected states may comment on draft GOPs if the area affected by the GOP is within 50 miles of one of the listed states. These procedural requirements were satisfied when the existing GOPs were adopted.

Because the previous procedures in Chapter 122 required GOPs to be created or revised by rule, the maintenance of the GOPs was resource intensive for the commission staff and confusing for the regulated community. This is because applicable requirements contained in a GOP may periodically be revised, repealed, or updated. For example, EPA may revise new source performance standards, national emission standards for hazardous air pollutants, and maximum available control technology standards. Additionally, the commission periodically revises reasonably available control technology standards (e.g., 30 TAC Chapters 111, 112, and 115). If any of these revised rules are an applicable requirement contained in a GOP, the permit holder is responsible for complying with the revised requirement by writing provisional terms and conditions, even though the revised applicable requirements have not been codified into the GOP through rulemaking. This situation can cause confusion for the regulated community, the public, and commission enforcement personnel, because the applicable requirements codified in the GOP (which is currently in a rule) would necessarily lag behind any recent revisions to the applicable requirements codified in Chapters 111, 112, and 115. Before the revised applicable requirements could be reflected in the GOP, the GOP itself would have to be revised through a rulemaking which can take from four to six months to complete. The rules adopted in this action give the executive director the authority to issue, revise, and rescind GOPs. Authorizing the executive director to issue, revise, or rescind a GOP allows it to be quickly updated, thereby eliminating a significant time delay in incorporating revisions to the codified applicable requirements. This authorization will assist affected industries because they will not have to incorporate and maintain provisional terms and conditions of their GOPs for lengthy periods of time. Agency resources that would be dedicated to revising the GOPs through the formal rulemaking process can be directed to review of applications. The commission emphasizes that this adoption will not

eliminate opportunity for public comment on proposed changes in the underlying applicable requirements because such changes, whether done on a state or federal level, are made through the traditional rulemaking process. Further, the adopted rules establish a process for the revision of the GOPs by the executive director, which is similar to the process used for revisions to site-specific operating permits.

Although this adoption will eliminate rulemaking steps involved in establishing and revising GOPs, the GOPs will continue to be subject to all Chapter 122 procedural requirements. The authority for the GOPs will remain in Chapter 122, Subchapter F. Before initial issuance by the executive director, the GOP will undergo Chapter 122 procedural requirements, including a 30-day public comment period with an opportunity to request a notice and comment hearing, an affected state review, and a 45-day EPA review. The GOPs will also be subject to a 60-day public petition period, during which the public may petition EPA to object to the GOP. These public notice, affected state review, EPA review, and public petition requirements are also found under 40 CFR §70.6(d) for GOPs. Although the specific public notice and notice and comment hearing procedures may vary slightly, the adopted procedures will authorize the executive director to establish permits governing multiple similar sites through procedures almost identical to those used for site-specific operating permits. This approach will change the commission's procedures for establishing and maintaining GOPs, but will not significantly affect the application process for and operation under a GOP. Applications for an authorization to operate under a GOP will continue to be reviewed by the executive director to ensure that the site qualifies for the GOP. Individual GOP applications are not subject to public notice, affected state review, EPA review, and public petition requirements, because these procedural

requirements occur during the development of the GOPs by the executive director. After the application review process is complete, the permitting authority is able to approve applications for GOPs without further public notice. Individual applications are, however, subject to the TCAA, §382.0516, Notice to State Senator and Representative, requirement to submit a notice of the application to the state senator and representative who represent the area in which the site is or will be located.

The adopted rule changes will provide new procedures for establishing GOPs; however, they will not change or repeal any current GOPs in §§122.511-122.516. This adoption provides the authority for the executive director to issue GOPs and is the first of three steps necessary for the conversion of the GOPs currently in §§122.511-122.516 into those issued by the executive director. The executive director will use the new procedures to propose GOPs that will replace those GOPs that currently exist in Chapter 122, Subchapter F. After the new GOPs have been issued, those in Subchapter F will be repealed.

The definition of “General operating permit” in §122.10(7) has been revised to read that a GOP is one issued under Subchapter F, instead of one adopted through rulemaking. The definition of “Permit or federal operating permit” in §122.10(10) has been changed to refer to GOPs issued, renewed, or revised by the executive director.

The change to §122.501(a) gives the executive director authority to issue a GOP. Throughout the rule, the term “adoption” has been replaced with the term “issuance.” The references to the Government

Code, Administrative Procedure Act, Chapter 2001 or 2002 have been deleted from §122.501(a)(6) and everywhere else it appears in Subchapter F, because these citations refer to rulemaking. Section 122.501(b) has been revised to be consistent with §122.201(b) concerning the finality of permits and the public petition process. Section 122.501(d) has been revised to authorize the executive director to revise a GOP and establishes procedures to revise or rescind a GOP. The rule now requires procedures for issuing administrative, minor, and significant permit revisions to GOPs, consistent with the requirements in Chapter 122, Subchapter C for site-specific permits. This change was necessary because the previous requirements for GOPs did not distinguish between administrative, minor, and significant permit revisions, because all revisions to GOPs were subject to rulemaking requirements.

The commission adopts the proposed changes to §122.503(a)(1) and §122.504(a)(1)(B) to indicate that a change in an applicability determination may cause the permit holder to submit an updated GOP application. These applicability determinations may change due to a change at the site, the revision or repeal of an applicable requirement, state-only requirement, or the revision or rescission of a GOP.

The word “original,” used in describing the GOP application, has been deleted from §122.503(a)(1), (d), and §122.504(g), because after the application has been updated, the original application is no longer used to verify applicability determinations. Section 122.503(a)(2) previously required GOP applications to be updated to correct typographical errors. This paragraph was deleted since the only portions of the GOP application that must be kept up-to-date are the applicability determinations and the basis for those determinations. Any typographical errors or other types of changes in those portions of the application that address applicability determinations are already addressed under §122.503(a)(1). In §122.503(c)(2) and (3), the term “updated application” will replace the phrase

“information required in subsection (b) of this section” and will reduce cross-references within §122.503. Furthermore, in §122.503(c)(4), the phrase “application required by this subsection” has been replaced with “updated application” for simplicity and to ensure consistent use of that term. Section 122.503(g) and §122.504(b) refer to “the emission units addressed in the authorization to operate.” Since the specific emission units are actually addressed in the application rather than the authorization, “authorization to operate” has been replaced with “application.”

Previously, §122.504(a) addressed situations where the permit holder’s authority to operate under a GOP was affected by the revision or repeal of an applicable requirement. In an effort to more clearly define when the procedures in §122.504 apply, the language in §122.504(a) was revised to directly state the circumstances when the permit holder’s authorization to operate will be affected, thus requiring the application to be updated and submitted within the time frames in §122.504. The authorization to operate will be affected if the applicability determinations at a site or the basis for the determinations change. Section 122.504(a) now refers to the revision or repeal of an applicable requirement or state-only requirement. When the applicable requirement or the state-only requirement is already a condition of a GOP and the applicable requirement or state-only requirement is revised or repealed, the permit holder is required to submit an updated application. The revised section clarifies that applications must be updated whenever a GOP is revised or rescinded by the executive director. In subsection (a)(1), the word “must” has been replaced with “shall” and the adjective “updated” has been added to the reference to the permit application for consistency with §122.503.

Section 122.504(a)(2) previously stated that an application containing information required under §122.504(a)(1) must be submitted by the effective date of the revised or repealed GOP. Section 122.504(a)(4) conflicted with this requirement since it requires §122.504(a)(1) information to be submitted within 45 days of the compliance date of the new requirement or effective date of the repealed requirement. Since a GOP is a codification of applicable requirements, new or repealed requirements will be in effect before the GOP can be revised to reflect these requirements. Because §122.504(a)(4) requires the information relating to new or repealed requirements to be submitted within 45 days of the compliance date of either requirement, the information will be submitted before the GOP becomes effective. The application deadline in §122.504(a)(2) is then no longer relevant and has been deleted by this adoption.

The requirements of §122.504(a)(4) are moved to §122.504(a)(3) and revised to clarify that the specified requirements apply when a revision to a GOP is the result of a change in an applicable requirement or state-only requirement. The new §122.504(a)(3)(B) adds the phrase “updated application” to avoid unnecessary cross-references. A new §122.504(a)(4) addresses the situation in which a revision to a GOP is not the result of a change in an applicable requirement or a state-only requirement. For example, this paragraph applies if a GOP is revised to include periodic monitoring requirements or to correct a mistake. In this case, the permit holder would submit an updated application within 45 days of the effective date of the revision. Section 122.504(c) addressed the repeal of GOPs and §122.504(d) addressed both the revision and repeal of GOPs. For clarity, the language in these sections has been revised so that §122.504(c) addresses rescission of a GOP and §122.504(d) addresses revisions. Under the previous rule, permit holders who wanted to operate

under a GOP were required to submit applications by the effective date of the GOP. The revised rule requires a permit holder who no longer qualifies for a GOP as a result of revision or rescission to the GOP to submit an application for another operating permit by the effective date of the rescission or revision. Language in §122.504(d) regarding the intent of the permit holder to operate under the GOP has been deleted because this section addresses procedures required as the result of changes to rules or GOPs and not decisions by the permit holder to change the way in which a site is operated.

Throughout §122.506, references to “proposed” in describing the draft general operating permit have been deleted because this term is used to describe a stage in the rulemaking process. The previous §122.506 was written to account for the rulemaking process, which requires a hearing for the adoption of, or revision to, any GOP. The new procedures for issuing GOPs also include an opportunity to request a notice and comment hearing. Revisions to §122.506(a) and a new §122.506(b) include the public notice requirements for GOPs issued by the executive director and allow a hearing to be requested consistent with the requirements in Chapter 122, Subchapter D. Section 122.506(a) also includes the procedures for public notice for newly issued GOPs and significant revisions to GOPs. The commission is continuing to develop the procedures for rescission of GOPs and will propose such procedures in a later rulemaking.

Due to an administrative error in the *Texas Register* (23 TexReg 8987), a portion of the proposed amendments to §122.506(a) was not designated as new rule language. Government Code, §2001.024(2) requires that rule text be prepared in a manner to indicate any words to be added or deleted from existing rule text. Because the new rule language was not completely underlined

(underlining is the editorial indication for proposed new language), the commission cannot adopt that portion of §122.506(a). The commission can adopt those portions of §122.506 that were correctly designated.

The language that was not underlined in the *Texas Register* in §122.506(a) required the executive director to publish the draft of a new general operating permit as follows: “The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission’s publicly accessible electronic media, and in a newspaper of general circulation within each of the following metropolitan areas: Beaumont, Houston, and Fort Worth. Additional notice may be provided, as determined by the executive director, in a newspaper of largest general circulation in the metropolitan area appropriate for the draft general operating permit.” Section 122.506 still contains the specific requirements concerning the content of public notices. Until §122.506(a) is repropose, the executive director will publish notices in accordance with the intended language of §122.506(a) that was incorrectly designated. The revisions to §122.506(b) require that a GOP and any associated notices be made accessible to local air pollution control agencies, consistent with Chapter 122, Subchapter D.

Throughout §122.508, references to “proposed” in describing the draft general operating permit have been deleted, because this term is used to describe a stage in the rulemaking process. Section 122.508 has been amended to state that a hearing will not be held if one is not requested. Again, the adopted language is consistent with the notice and comment hearings requirements in Chapter 122, Subchapter D.

Section 122.509 establishes requirements for public announcement of minor permit revisions to GOPs. Consistent with the revision requirements in Chapter 122, Subchapter C, minor permit revisions to GOPs will be subject to public announcement requirements. The public announcement requirements in Chapter 122, Subchapter D could not simply be referenced, because they include requirements that apply to specific permit applications, and the GOP public announcement requirements must be modified to accommodate the new process for GOPs issued by the executive director. Except for the application specific or site-specific requirements, all public announcement requirements in Subchapter D have been included in §122.509.

Section 122.510 allows GOPs issued under the APA to remain in effect until they are repealed through rulemaking. This section also states that an authorization to operate under a GOP adopted by the commission that is replaced with a GOP issued by the executive director will be automatically converted. In addition, this new section states that should the applicability determinations and the basis for the determinations affecting a site remain unchanged, the permit holder is not required to submit an application for the GOP issued by the executive director. This will allow permit holders to avoid having to submit applications containing no new information.

Additionally, changes are made to §122.134(b)(5) and §122.201(f) to maintain consistency with the adopted changes to Subchapter F. In §122.134(b)(5), the term “repealed” has been replaced with “rescinded” to reflect the revision to the name of §122.504 which added the term “rescinded.” The previous §122.201(f) noted that the adoption of a GOP is not required to meet the requirements of §122.201. Since the new Subchapter F changes will create GOPs issued by the executive director, the

phrase “issuance of a general operating permit by the executive director” replaced the phrase “adoption of a general operating permit.”

Another area addressed by these revisions is the Chapter 122 full program application schedule for GOPs. Under the full program, an owner or operator should have submitted an abbreviated permit application by February 1, 1998, for any site subject to the full program regardless of permit application type. Once the abbreviated permit application has been submitted, the remaining permit application information submittal then becomes specific to permit application type and Standard Industrial Classification (SIC) major grouping. Previously, §122.130(b)(2) indicated that an owner or operator of a site subject to the full program and applying for a GOP should submit remaining permit application information by July 25, 1998, regardless of SIC major grouping. This requirement was written specifically for the §122.516 GOP developed for full program sites. The commission determined that owners or operators of some sites subject to the full program may be able to take advantage of a GOP developed for interim program sites. Owners or operators of these full program sites, however, have a deadline for submitting the remaining permit application information that is later than July 25, 1998. To allow the owners or operators of these full program sites to take advantage of a GOP and submit remaining permit application information at a date later than July 25, 1998, the phrase “for any site for which the applicant is applying for a general operating permit and” has been deleted from §122.130(b)(2).

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking according to the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225. The adopted rules are intended to implement new procedures to be used by the executive director for the issuance, revision, renewal, and rescission of GOPs. It also allows sites that are subject to the full operating permit program to take advantage of GOPs that were originally thought to be only available for interim program sites. It does not add any new regulatory requirements for the regulated community. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state and is not a major environmental rule as defined in the Code.

This adoption does not exceed a standard set by federal law and is not specifically required by state law. As an alternate federal operating permit mechanism, 40 CFR §70.6(d) allows for the use of general permits. TCAA, §382.061, Delegation of Powers and Duties, allows the commission to delegate to the executive director the powers and duties under §§382.051-382.0563, which include the authority to issue federal operating permits. TWC, §5.122, concerning Delegation of Uncontested Matters to Executive Director, allows the commission to delegate certain actions regarding applications to the executive director. Section 122.110 authorizes the executive director to take action on any permit on behalf of the commission.

The use of general permits is not specifically required by federal law and the adopted rules do not exceed an express requirement of state law. Section 382.051(b) allows, but does not require, the

commission to issue general permits developed by rule for numerous similar sources subject to TCAA, §382.054, concerning Federal Operating Permit. The new procedures for GOPs are authorized by rule; therefore, even though the GOPs themselves are not rules, the authority for the GOPs is clearly established through rulemaking.

This adoption does not exceed a requirement of delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program. No such agreement exists concerning the subject of this adoption.

This action is adopted under the specific statutory authority of TCAA, §382.051(b), which authorizes the commission to issue general permits developed by rule for numerous similar sources subject to §382.054, concerning Federal Operating Permit and §382.061(a), which authorizes the commission to delegate to the executive director the powers and duties under §§382.051-382.0563 and 382.059, except for the adoption of rules and TWC, §5.122, concerning Delegation of Uncontested Matters to Executive Director, which allows the commission to delegate certain actions regarding applications to the executive director. This action is not adopted under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this adopted rulemaking under Texas Government Code, §2007.043. The following is a summary of that assessment. The revised rules allow the executive director to issue general operating permits and remove the requirement for GOPs to be adopted by the commission through rulemaking. Promulgation and enforcement of the adopted

sections will not be a burden on private real property because they do not place additional requirements on those required to obtain a federal operating permit. The adopted rulemaking will not make existing regulations less stringent. This rulemaking adoption is also an exempt action under Texas Government Code, §2007.003(b), since the commission is fulfilling its requirement to implement a federally mandated program.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies, specifically §501.12(1), which is to protect, restore, and enhance the diversity, quality, functions, and values of coastal natural resource areas and §501.14(q), regarding compliance with 40 CFR, Protection of Environment. The permits issued under Chapter 122, concerning Federal Operating Permits, do not authorize the increase in air emissions nor do these permits authorize new air emissions.

HEARING AND COMMENTERS

A public hearing was held in Austin on September 28, 1998, and the public comment period closed October 5, 1998. No oral testimony was received at the hearing. One individual and Bracewell & Patterson, L.L.P. (Bracewell) submitted written comments on the proposal.

The individual commented that he is opposed to GOPs and believes that GOPs cannot be adequately written for multiple stationary sources. In particular, the individual does not believe this can be done at different locations. The individual believes that the commission must rule on each GOP because it involves several different facilities and is a complicated action compared to a single-site operating permit. The individual stated that the responsibility lies squarely with the commission and it must not abdicate its authority in this matter.

The commission disagrees with the comment that GOPs cannot be written to authorize the operation of numerous similar sources. GOPs codify the applicable requirements (state and federal regulations) that apply to emission units at sites that are similar in terms of operations, processes, and emissions. For example, a site that contains numerous emission units that are subject to applicable requirements that address opacity and particulate concentration limits would be a good candidate for a GOP. Applicable requirements addressing opacity and particulate concentration limits are requirements that apply to a broad spectrum of emission units at various sites without any site-specific revision. Even if the commission required these sites to obtain a site-specific operating permit, these same applicable requirements would be contained in that permit. Regardless of the mechanism used to permit this site, only the

requirements codified in the rules would be applied to it. A GOP collects these codified requirements and expedites the issuance of the permit.

With the authority to issue, revise, and rescind GOPs, the executive director can quickly update applicable requirements in GOPs after the requirements are changed through rulemaking. The commission disagrees with the statement that a GOP involves a complicated action. The GOP is primarily a collection of existing rules that can be broadly applied to simple, though sometimes large, permitting situations. The commission has not abdicated its authority. Federal rules are codified in GOPs after they have gone through the appropriate public participation process conducted by the EPA. The state rules which are codified into GOPs are adopted, amended, or repealed at the discretion of the commission. In addition, these rules are subject to full public comment procedures under the APA. The FCAA, §504(d), specifically states that after notice and an opportunity for a public hearing, a permitting authority can issue general permits that will cover numerous similar sources. General permits must comply with all of the requirements that apply to permits under 40 CFR Part 70. Section 70.6(d), concerning General Permits, provides the regulatory authority for the development of general permits that cover numerous similar sources, and it tracks the authority and requirements of FCAA, §504(d). Section 70.6(d) requires GOPs to go through public notice (including an opportunity for a hearing), as well as the 45-day EPA review, the 30-day review for affected states, and the 60-day public petition period. After this process is complete, the permitting authority is able to approve applications for GOPs without further public notice. For these reasons the commission believes that GOPs can be

effectively used to expedite permitting without degrading the environmental benefits of the permitting process.

In the preamble to 40 CFR Part 70 in the July 21, 1992, issue of the *Federal Register* (57 FR 32278), EPA discusses the value of general permits. In particular, EPA focused on the benefit of using GOPs for sources that are generally the same in terms of operations, are not subject to case-by-case standards, and have similar requirements for recordkeeping, monitoring, operations, etc. EPA states that the “primary purpose of section 504(d) is to provide an alternative means for permitting sources for which the procedures of the normal permitting process would be overly burdensome.” The existing GOPs are consistent with the requirements of TCAA, Part 70 and Chapter 122 in that they cover numerous similar sources that are not subject to case-by-case determinations and have similar requirements in terms of operations.

The individual commented that he was opposed to the revision to §122.10(7), the definition of “General operating permit.”

The proposed revision was to delete the language that indicated a GOP is a “permit by rule.” This change is necessary to reflect that after this rule is adopted, the executive director will issue, amend, or rescind GOPs without further commission action. TCAA, §382.051(a) provides that the commission may issue a permit to operate a federal source. To assist in fulfilling the authority provided by §382.051(a), §382.051(b) authorizes the commission to issue general

permits developed by rule for numerous similar sources subject to TCAA, §382.054, concerning Federal Operating Permit.

TCAA, §382.061, Delegation of Powers and Duties, allows the commission to delegate (except for the adoption of rules) to the executive director the powers and duties under §§382.051 - 382.0563, which includes the authority to issue federal operating permits. TWC, §5.122, concerning Delegation of Uncontested Matters to Executive Director, allows the commission to delegate certain actions regarding applications to the executive director if, among other things, the application is uncontested and does not require an evidentiary hearing. Section 382.0561, concerning Federal Operating Permit: Hearing, specifically exempts federal operating permits from the contested case hearing procedures under the APA. Under the commission's policy concerning uncontested matters, any comments or even a hearing on a federal operating permit will not result in that matter becoming "contested," as that term is used in TWC, §5.122. Thus, the commission may delegate the authority to issue GOPs to the executive director because the applications for GOPs will not result in a contested matter under the APA.

The proposed procedures for issuing GOPs are within the existing statutory authority of the commission because their issuance continues to be authorized by rule even though each individual GOP will not be (and is not required to be) contained or adopted in a rule. This is consistent with §§382.051(b)(2), 382.061, and 5.122 because the commission's action adopting the proposed revisions to Chapter 122, Subchapter F, is the rulemaking action that implements those TCAA provisions.

Under the new procedures, the GOPs will no longer be developed through rulemaking and thus approved by the commission as rules, but this does not mean that they will not be subject to substantial public notice procedures. In addition, each individual claim for operation under a GOP will be subject to technical review by the executive director. Additionally, the applicable requirements that are codified in the GOPs are subject to public notice and comment under the APA and similar federal requirements.

The GOPs that are currently available were developed for certain sites subject to Chapter 122 that are similar in terms of operations, unit types, processes, and emissions. GOPs have been a very successful mechanism for streamlining the application and permitting process. Through the use of these GOPs, the commission has issued the largest number of federal operating permits in the nation (according to the EPA). During the first year of the operating permit program, Texas was the only state to meet the requirement in 40 CFR §70.7(a)(2) to issue two-thirds of the permits during the first two years of the program (this is also a requirement of the TCAA, §382.0542(b)(2) and (3)). Because a large number of sources are now covered by GOPs, owners or operators are more aware of all applicable regulatory requirements for their sources. This awareness facilitates compliance with the applicable requirements. Therefore, GOPs have also been successful in achieving the goal of providing an efficient and effective compliance and enforcement tool by codifying applicable requirements. The purpose of this rulemaking is to continue providing an effective compliance and enforcement tool by creating a more efficient mechanism for maintaining a current set of applicable requirements in the GOPs. The

commission believes that there is no loss of environmental protection by allowing GOPs to be issued, amended, and rescinded by the executive director and will retain the proposed definition.

The individual also commented that the new procedures would not allow the commission to determine the cumulative impacts of sources operating under GOPs.

Cumulative effects are not required to be addressed by the federal operating permits program. A GOP is a type of federal operating permit that contains all of the applicable requirements for numerous similar sites. An operating permit codifies the various state and federal applicable requirements that sources must comply with in order to operate. Cumulative effects are not currently addressed in GOPs or site-specific operating permits, and these permits are not intended or required to do so. Because the previous procedures for the adoption of GOPs did not consider cumulative impacts, the adoption of the new procedures for issuance of GOPs will not change this practice.

The individual commented that under §122.501(d), the requirement for public notice and comments should be added as a (C) under the appropriate paragraph of this subsection.

Under §122.501(d), the requirements for the executive director to issue an administrative, minor, or significant GOP revision are specified. Section 122.501(d)(2)(C) specifies the requirements for public announcement, affected state review, and EPA review for minor permit revisions. Section 122.501(d)(3)(C) and (4) specify the requirements for public notice, affected state review, EPA

review and public petition, for significant permit revisions. As with administrative permit revisions for site operating permits, there is no public notice required for these types of revisions for GOPs. These requirements are generally consistent with the requirements in Subchapter C for site-specific permits. Some modification was required for public announcement for minor permit revisions. Public notice for the initial issuance of a GOP is required by §122.506. Notice and comment hearings for GOPs are addressed in §122.508. Because §122.501(d), as proposed, sets out the specific public notice requirements, the commission believes that it is not necessary to repeat this information in a new subsection.

The individual commented that under §122.509(b), for minor permit revisions to GOPs, it is not sufficient public notice to print the notice on the commission internet site because many people do not have a computer or easy access to the internet. The individual commented that the commission also needs to print minor permit revisions for GOPs in a regional newspaper and in the *Texas Register*. The individual commented that he is against the reduction of public participation and believes that the commission is acquiescing to industry concerns.

The commission does not agree that this adoption is reducing the opportunity for public participation. Under §122.501(d)(2), the requirements for the executive director to issue a minor GOP revision are specified and includes satisfying §122.509, concerning Public Announcement for General Operating Permits. The requirements under §122.509 are consistent with the requirements under §122.312, concerning Public Announcement, which must be satisfied for minor revisions to site-specific permits. Minor permit revisions are subject to an electronically

announced 30-day public comment period, an affected state review, and a 45-day EPA review; while EPA's minor permit modification process involves only EPA review and affected state review.

The requirement for public announcement for minor permit revisions go beyond the requirements of 40 CFR 70 to provide for public notice. Due to the nature of minor permit revisions and the high cost of newspaper notice, which could be thousands of dollars per notice, the commission determined that the goal of providing sufficient and timely opportunities for public participation would best be met through the electronic notice. The electronic notice will be posted for a set amount of time in the same electronic location during the public notice period. However, the newspaper, as well as the *Texas Register*, are only printed once. By using the electronic notice, the commission can provide more information in a more timely manner and for a longer period of time. The commission also intends to provide the public access to Title V permitting information at its regional offices.

Bracewell commented that the proposed §122.503(a) should be clarified, to make clear that it refers to general operating permits only, by inserting the words "of a general operating permit" into §122.503(a) so that it would read: "The permit holder of a general operating permit shall submit an updated application . . ."

The commission does not agree that it is necessary to make the change suggested by Bracewell. Subchapter F addresses the requirements for GOPs. Throughout Subchapter F, there are

references to “permit holder.” The definition of “Permit holder” in §122.10(12) includes a person who has been granted the authority to operate under a GOP.

Bracewell also commented that the proposed §122.506(a) does not accurately reflect the original wording of §122.506(a) because part of the proposed new language, as published in the *Texas Register*, was not underlined. Bracewell requested that the commission clarify in the final rule what was intended to be the proposed language and noted that this publication error would not have any adverse impact.

Unfortunately, a portion of the proposed language in §122.506(a) was not underlined in the *Texas Register* even though the language was correctly printed. Government Code, §2001.024(2), requires that rule text be prepared in such a manner to indicate any words to be added or deleted from existing text. Because a portion of the proposed language was not correctly designated as new language, the commission cannot adopt that language. The commission will adopt the language that was correctly designated. The language that was not adopted requires the executive director to publish notice of a draft general operating permit as follows: “The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission’s publicly accessible electronic media, and in a newspaper of general circulation within each of the following metropolitan areas: Beaumont, Houston, and Fort Worth. Additional notice may be provided, as determined by the executive director, in a newspaper of largest general circulation in the metropolitan area appropriate for the draft general operating

permit.” In the interim, the executive director will publish notices in accordance with the intended language of §122.506(a) until the appropriate language can be adopted.

SUBCHAPTER A : DEFINITIONS

§122.10

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air; §382.017, which provides the commission authority to adopt rules, §382.051(b)(2), which provides the commission authority to issue general permits for numerous similar sources; §382.061(a), which authorizes the commission to delegate to the executive director the powers and duties under §§382.051-382.0563 and 382.059 except for the adoption of rules; TWC, §5.122, concerning Delegation of Uncontested Matters to Executive Director, which authorizes the commission to delegate certain actions regarding applications to the executive director; and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

§122.10. General Definitions.

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(7) **General operating permit** - A permit issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple stationary sources may be authorized to operate.

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

(10) **Permit or federal operating permit** -

(A) (No change.)

(B) any general operating permit, or group of general operating permits, issued, renewed, or revised by the executive director under this chapter.

(11) - (22) (No change.)

SUBCHAPTER B : PERMIT REQUIREMENTS

DIVISION 3 : PERMIT APPLICATION

§122.130, §122.134

STATUTORY AUTHORITY

The amendments are adopted under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air; §382.017, which provides the commission authority to adopt rules; §382.051(b)(2), which provides the commission authority to issue general permits for numerous similar sources; §382.061(a), which authorizes the commission to delegate to the executive director the powers and duties under §§382.051-382.0563 and 382.059, except for the adoption of rules; TWC, §5.122, concerning Delegation of Uncontested Matters to Executive Director, which authorizes the commission to delegate certain actions regarding applications to the executive director; and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

§122.130. Initial Application Due Dates.

- (a) (No change.)

- (b) Full operating permit program.
 - (1) (No change.)

(2) The remaining application information for sites with the following primary SIC major groups shall be submitted by July 25, 1998 (for purposes of this section, each site shall have only one primary SIC code):

(A) - (H) (No change.)

(3) (No change.)

(c) - (d) (No change.)

§122.134. Complete Application.

(a) (No change.)

(b) Except as provided in subsection (c) of this section, a complete application for a permit shall include the following:

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

(5) for the authorization to operate under a revised general operating permit, the information required by §122.504 of this title (relating to Application Revisions When a General Operating Permit is Revised or Rescinded).

(c) (No change.)

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

DIVISION 1 : INITIAL PERMIT ISSUANCES

§122.201

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air; §382.017, which provides the commission authority to adopt rules; §382.051(b)(2), which provides the commission authority to issue general permits for numerous similar sources; §382.061(a), which authorizes the commission to delegate to the executive director the powers and duties under §§382.051-382.0563 and 382.059, except for the adoption of rules; TWC, §5.122, concerning Delegation of Uncontested Matters to Executive Director, which authorizes the commission to delegate certain actions regarding applications to the executive director; and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

§122.201. Initial Permit Issuance.

(a) - (e) (No change.)

(f) Neither the issuance of a general operating permit by the executive director nor the granting of an authorization to operate under a general operating permit shall be required to meet the

requirements of this section. General operating permits are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits).

(g) (No change.)

SUBCHAPTER F : GENERAL OPERATING PERMITS

DIVISION 1 : PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.501, 122.503, 122.504, 122.506, 122.508-122.510

STATUTORY AUTHORITY

The amendments and new sections are adopted under the Texas Health and Safety Code, the TCAA, §382.012, which provides the commission authority to develop a comprehensive plan for the state's air; §382.017, which provides the commission authority to adopt rules; §382.051(b)(2), which provides the commission authority to issue general permits for numerous similar sources; §382.061(a), which authorizes the commission to delegate to the executive director the powers and duties under §§382.051-382.0563 and 382.059, except for the adoption of rules; TWC, §5.122, concerning Delegation of Uncontested Matters to Executive Director, which authorizes the commission to delegate certain actions regarding applications to the executive director; and §382.054, which prohibits operation of a federal source of air pollution without a federal operating permit obtained from the commission.

§122.501. General Operating Permits.

(a) The executive director may issue a general operating permit for numerous similar stationary sources provided the following:

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

(4) the requirements under §122.508 this title (relating to Notice and Comment Hearings for General Operating Permits) have been satisfied; and

(5) the requirements under §122.350 of this title (relating to EPA Review) have been satisfied.

(b) General operating permits shall not be final until the requirements in §122.360 of this title (relating to Public Petition) have been satisfied.

(c) (No change.)

(d) The executive director may revise or rescind any general operating permit issued by the executive director.

(1) The executive director may issue an administrative permit revision to a general operating permit provided the following:

(A) the change meets the criteria for an administrative permit revision in §122.211 of this title (relating to Administrative Permit Revisions); and

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter.

(2) The executive director may issue a minor permit revision provided the following:

(A) the change meets the criteria for a minor permit revision in §122.215 of this title (relating to Minor Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.509, 122.330, and 122.350 of this title (relating to Public Announcement for General Operating Permits; Affected State Review; and EPA Review) have been satisfied.

(3) The executive director may issue a significant permit revision provided the following:

(A) the change meets the criteria for a significant permit revision in §122.219 of this title (relating to Significant Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.506, 122.330, 122.508, and 122.350 of this title (relating to Public Notice for General Operating Permits; Affected State Review; Notice and Comment Hearings for General Operating Permits; and EPA Review) have been satisfied.

(4) A significant permit revision shall not be final until the requirements in §122.360 of this title have been satisfied.

(e) The executive director shall make a copy of the draft general operating permit accessible to the EPA.

(f) General operating permits must be renewed, consistent with the procedural requirements in subsection (a) of this section, at least every five years after the effective date.

§122.503. Application Revisions for Changes at a Site.

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

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

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

(b) (No change.)

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director:

(1) the permit holder complies with the following:

(A) (No change.)

(B) all applicable requirements;

(C) all state-only requirements; and

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

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

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

(4) the permit holder operates under the representations in the updated application.

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

(e) - (f) (No change.)

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

(h) - (i) (No change.)

§122.504. Application Revisions When a General Operating Permit is Revised or Rescinded.

(a) If the applicability determinations or the bases for the determinations at a site change due to the revision or repeal of an applicable requirement or state-only requirement or the revision or

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

_____ (1) The permit holder shall submit an updated application for the general operating permit containing at a minimum the following information:

_____ (A) (No change.)

_____ (B) any changes in the applicability determinations;

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

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

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

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

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

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

(B) submit an updated application for the general operating permit no later than 45 days after the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement; and

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

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

(A) submit the updated application no later than 45 days after the issuance of the general operating permit; and

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

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

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

(2) (No change.)

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

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

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

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

(f) (No change.)

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

§122.506. Public Notice for General Operating Permits.

(a) Before the issuance of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the draft general operating permit consistent with the requirements of this section. The notice shall contain the following information:

- (1) a description of the activities involved in the draft general operating permit;
- (2) the location and availability of copies of the draft general operating permit;

(3) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing;

(4) the notification that a person who may be affected by the emission of air pollutants from emission units that may be authorized to operate under the general operating permit is entitled to request a notice and comment hearing; and

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

(b) During the 30-day public notice comment period, any person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit may request in writing a notice and comment hearing on a draft general operating permit.

(c) The executive director shall make a copy of the general operating permit and any required notices accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit.

(d) The executive director shall make the draft general operating permit available for public inspection throughout the comment period during business hours at the commission's central office.

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

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

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

(h) The executive director shall provide 30 days' advance notice of the hearing.

§122.508. Notice and Comment Hearings for General Operating Permits.

(a) All hearings regarding general operating permits shall be conducted under the procedures in this section.

(b) Any person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit may request that the executive director hold a hearing on a draft general operating permit.

(c) The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit, and that request is reasonable, the executive director shall hold a hearing.

(d) The executive director shall publish notice of a hearing on a draft general operating permit. The notice must be published at least 30 days before the date set for the hearing. The notice must include, at a minimum, the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.

(e) At the executive director's discretion, the hearing notice may be combined with the notice of the opportunity for public comment required by this subchapter.

(f) Any person may submit oral or written statements and data concerning the draft general operating permit.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of the hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(g) A tape recording or written transcript of the hearing shall be made available to the public.

(h) Any person who believes that any condition of the draft general operating permit is inappropriate or that the preliminary decision to issue the general operating permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(i) Any supporting materials for comments submitted under subsection (f) of this section shall be included in full and may not be incorporated by reference, unless the materials are one of the following:

- (1) already part of the administrative record in the same proceedings;
- (2) state or federal statutes and regulations;
- (3) EPA documents of general applicability; or
- (4) other generally available reference materials.

(j) The executive director shall keep a record of all comments and also of the issues raised in the hearing. This record shall be available to the public.

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

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

§122.509. Public Announcement for General Operating Permits.

(a) The public announcement requirements in this section apply to minor permit revisions to general operating permits.

(b) The executive director shall publish an announcement of a draft general operating permit for a minor permit revision to a general operating permit on the commission's publicly accessible electronic media. The announcement shall contain the following:

(1) the location and availability of the following:

(A) the draft general operating permit;

(B) all other relevant supporting materials in the public files of the commission;

(2) a description of the comment procedures, including the duration of the public announcement comment period; and

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

(c) The executive director shall make a copy of the public announcement and date of publication accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit.

(d) The executive director shall furnish a notice of the public announcement to any air pollution control agency of any affected state.

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

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

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

(h) Public notice requirements for general operating permits satisfy public announcement requirements.

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

§122.510. General Operating Permits Adopted by the Commission.

(a) Any general operating permit in this subchapter adopted by the commission shall remain in effect until it is repealed under the APA.

(b) Any authorization to operate under a general operating permit in this subchapter adopted by the commission that is replaced with a general operating permit issued by the executive director shall be automatically converted to an authorization to operate under the general operating permit issued by the executive director. Provided the applicability determinations and the bases for the determinations affecting a site remain unchanged, the permit holder is not required to submit an application for the general operating permit issued by the executive director.