

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §122.10, General Definitions; §122.110, Delegation of Authority to Executive Director; §122.130, Initial Application Due Dates; §122.131, Phased Permit Detail; §122.132, Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits; §122.134, Complete Application; §122.139, Application Review Schedule; §122.140, Representations in Application; §122.142, Permit Content Requirements; §122.143, General Terms and Conditions; §122.161, Miscellaneous; §122.210, General Requirements for Revisions; §122.213, Procedures for Administrative Permit Revisions; §122.217, Procedures for Minor Permit Revisions; §122.322, Bilingual Public Notice; §122.350, EPA Review; §122.410, Operating Permit Interface; §122.412, Acid Rain Permit Application Due Dates; §122.414, Acid Rain Permit Revisions; §122.501, General Operating Permits; §122.502, Authorization to Operate; §122.503, Application Revisions for Changes at a Site; §122.504, Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded; §122.505, Renewal of the Authorization to Operate Under a General Operating Permit; and §122.506, Public Notice for General Operating Permits. The commission also adopts new §122.600, Implementation of Periodic Monitoring; §122.602, Periodic Monitoring Applicability; §122.604, Periodic Monitoring Application Due Dates; §122.606, Applications for Periodic Monitoring; §122.608, Procedures for Incorporating Periodic Monitoring Requirements; §122.610, Periodic Monitoring General Operating Permits Content; §122.612, Periodic Monitoring Requirements Permits and General Operating Permit Applications; §122.700, Implementation of Compliance Assurance Monitoring; §122.702, Compliance Assurance Monitoring Applicability; §122.704, Compliance Assurance Monitoring Application Due Dates;

§122.706, Applications for Compliance Assurance Monitoring; §122.708, Procedures for Incorporating Compliance Assurance Monitoring Requirements; §122.710, Compliance Assurance Monitoring General Operating Permit Content; §122.712, General Terms and Conditions for Compliance Assurance Monitoring; §122.714, Compliance Assurance Monitoring Requirements in Permits and General Operating Permit Applications; and §122.716, Compliance Assurance Monitoring Quality Improvement Plans.

Sections 122.10, 122.134, 122.140, 122.142, 122.143, 122.161, 122.217, 122.501 - 122.504, 122.506, 122.604, 122.606, 122.608, 122.610, 122.612, 122.700, 122.702, 122.706, 122.708, 122.712, 122.714, and 122.716 are adopted with changes to the proposed text as published in the March 10, 2000 issue of the *Texas Register* (25 TexReg 1979). Sections 122.110, 122.130 - 122.132, 122.139, 122.210, 122.213, 122.322, 122.350, 122.410, 122.412, 122.414, 122.505, 122.600, 122.602, 122.704, and 122.710 are adopted without changes and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Title V of the 1990 Amendments to the Federal Clean Air Act (FCAA), enacted on November 15, 1990, directed the United States Environmental Protection Agency (EPA) to establish the minimum requirements for a state operating permit program. The EPA promulgated 40 Code of Federal Regulations Part 70 (40 CFR Part 70) to comply with this directive. The commission adopted Chapter 122, Federal Operating Permits, to implement the federal operating permits program required by 40 CFR Part 70.

This rulemaking revised Chapter 122 to address two federally mandated monitoring programs: compliance assurance monitoring and periodic monitoring. On October 22, 1997, EPA established the Compliance Assurance Monitoring (CAM) Program with the promulgation of 40 CFR Part 64 to respond to FCAA, §114(a)(3), concerning enhanced monitoring and compliance certifications and FCAA, §504(b), concerning monitoring and analysis (62 FR 54901). 40 CFR 64 was originally proposed in 1991 as the enhanced monitoring rule. However, due to the controversy surrounding it and subsequent proposals, EPA decided to shift the focus of 40 CFR Part 64, and the enhanced monitoring rule was withdrawn and replaced with CAM. The EPA states that “the general purpose of the monitoring required by Part 64 is to assure compliance with emission standards through requiring monitoring of the operation and maintenance of the control equipment and, if applicable, operating conditions of the pollutant-specific emissions unit” (62 FR 54918). The commission adopts this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program and to provide a streamlined implementation approach. The CAM requirements reside in the new Subchapter H, concerning Compliance Assurance Monitoring.

The other federal monitoring program addressed by this rulemaking is “periodic monitoring.” Although EPA promulgated an entire rule to specifically define the requirements for implementing CAM, the regulatory authority for periodic monitoring resides solely in 40 CFR §70.6(a)(3)(i)(B). This requirement specifies that where an applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the

relevant time period that is representative of an emission unit's compliance with the permit. The commission has always had the authority under Chapter 122 to incorporate periodic monitoring requirements into federal operating permits. However, this rulemaking provides an alternative streamlined approach, similar to that adopted for CAM, to implement periodic monitoring requirements. The requirements for the implementation of periodic monitoring reside in the new Subchapter G, concerning Periodic Monitoring. Finally, the commission amended some sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, to address an administrative error in a previous rulemaking, to address recent changes in federal rules, and to address requirements in the Texas Clean Air Act (TCAA).

SECTION BY SECTION DISCUSSION

The explanation of the rule is divided into three parts. The first part contains a general overview of CAM and the streamlined CAM implementation approach, as well as a discussion of the specific CAM requirements of Subchapter H (§§122.700 - 122.716). The second part contains a general overview of periodic monitoring and the periodic monitoring implementation approach, as well as a discussion of the relationship between CAM and periodic monitoring (§§122.600 - 122.612). The second part also contains a discussion of the specific periodic monitoring requirements of Subchapter G. The third part is a discussion of other amendments to Chapter 122, including amendments to acid rain requirements (§§122.110 - 122.506). The commission introduced several new terms into §122.10 and amended several others. Specific changes to definitions are discussed in the applicable part of the preamble discussion.

In accordance with §122.10(2), CAM is an applicable requirement of the federal operating permits program because EPA states that CAM was promulgated under the authority of FCAA, §114(a)(3) and §504(b). The commission adopts this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program in Texas and to provide a streamlined implementation approach. Unlike many other applicable requirements that specifically define emission limitations or standards and associated monitoring, recordkeeping, reporting, and testing requirements, 40 CFR 64 is a general monitoring rule that defines broad principles and performance criteria for establishing CAM requirements in the federal operating permit, but does not specifically define the monitoring requirements that apply to a specific emission unit. As a result, Subchapter H is necessary to provide procedures for establishing the CAM requirements that will apply to permit holders.

40 CFR 64 applies to emission units with control devices at major sources that have the pre-control potential to emit greater than the major source threshold levels and are subject to an emission limitation or standard in an applicable requirement. It only applies to emission units meeting all these criteria, evaluated on a pollutant-by-pollutant basis. 40 CFR 64 also contains exemptions for certain emission limitations and standards and specific types of emission units. It requires monitoring that provides a reasonable assurance of compliance with the applicable requirements and reflects proper operation and maintenance of the control device.

Three options for the implementation of CAM were considered: a strictly “case-by-case” approach, a rulemaking approach, and a general operating permit (GOP) approach. 40 CFR 64 focuses on a “case-

by-case” approach. This approach would require each owner or operator to design a monitoring plan for each emission unit subject to CAM and to submit it, along with a detailed justification for each element of the plan, to the permitting authority for approval. However, due to the complex nature of the 40 CFR 64 requirements and the number of emission units in Texas that may be subject to 40 CFR 64, the design and review of “case-by-case” CAM plans would be resource-intensive for both permit holders and the executive director. Under a strictly “case-by-case” approach, maintaining consistency in the application of CAM requirements across the state may be difficult. In addition, a strictly “case-by-case” approach would require separate executive director review, public review, and EPA review for each individual CAM plan. The commission does not believe that implementing CAM on a strictly “case-by-case” basis is the best use of the regulated community’s, the public’s, EPA’s, or the executive director’s resources. Consequently, the commission did not propose to implement CAM on a strictly “case-by-case” basis.

In addition to the strictly “case-by-case” approach, an implementation approach using rulemaking to establish CAM requirements was considered. This approach would require the commission to use rulemaking to establish monitoring requirements for applicable requirements that would satisfy CAM for emission units across the state. However, as with a strictly “case-by-case” approach, the rulemaking process is resource-intensive and, due to the procedural requirements involved, is often very time-consuming. In addition, because applicable requirements change frequently, keeping CAM requirements that are established through rulemaking current would be difficult. If an applicable requirement changed, revisions to the affected rule would be required before the CAM requirements

could be updated to account for the change in the applicable requirement. The minimum time for the commission to complete rulemaking is approximately five months. The commission does not believe that a rulemaking approach for the implementation of CAM is a suitable or practical option. Therefore, the commission did not propose a rulemaking approach for the implementation of CAM.

Finally, GOPs were considered as a means for implementing CAM. This approach would allow the executive director to use GOPs to establish the monitoring requirements that would satisfy CAM for emission units across the state. The commission believes that the compliance assurance monitoring general operating permit (CAM GOP) approach would minimize resource expenditures for the permit holder, the executive director, the public, affected states, and EPA. This approach would allow the permit holder to choose a CAM monitoring option determined by the executive director to satisfy CAM rather than design a “case-by-case” CAM plan. These monitoring options could be used by multiple emission units across the state. Use of these CAM GOPs would allow EPA, the public, and affected states to consolidate the majority of their review of these requirements and, thus, allow the executive director to resolve any comments more efficiently. As a result of the consolidated review and predetermined options in the CAM GOP, this approach would help ensure that implementation of these requirements is consistent across the state. In contrast to the rulemaking approach, CAM GOPs could be revised through the GOP revision process. This would allow the executive director to more easily revise CAM GOPs to reflect rule changes.

Although 40 CFR 64 focuses on a “case-by-case” approach, it allows permitting authorities the flexibility to use a programmatic approach, such as the CAM GOP approach, for the implementation of CAM. The commission submitted several comments to EPA during the development of 40 CFR 64, recommending that permitting authorities be allowed to establish CAM requirements on a programmatic basis. This programmatic approach would allow permitting authorities to design CAM monitoring requirements for a class of emission units that can be used across the state. The preamble to the promulgated 40 CFR 64 rule states that “[t]he EPA encourages States to consider adding monitoring requirements to existing and new rules that are consistent with 40 CFR 64 requirements. In this manner, the burdens associated with source-specific monitoring development could be reduced. To provide an incentive for this type of rule, the final rule includes a provision (see §64.4(b)) that allows the owner or operator to rely upon this type of programmatic rule as the primary documentation of the appropriateness of its monitoring. This approach would reduce the number of case-by-case reviews necessary to implement 40 CFR 64 (62 FR 54903). Although the 40 CFR 64 preamble discusses the programmatic approach in the context of rulemaking, the commission believes that the CAM GOP approach is consistent with the goals of the programmatic approach and achieves the same results. As discussed previously, the CAM GOP approach would more easily accommodate changes in applicable requirements than would a rulemaking approach. The ability to quickly address revised applicable requirements is particularly important to ensure that federal operating permits reflect a site’s most current compliance obligations. Thus, the CAM GOP streamlined approach is designed to address 40 CFR 64 requirements in a programmatic manner.

This rulemaking establishes procedures for using CAM GOPs to provide monitoring options for emission units subject to 40 CFR 64. Establishing CAM requirements through a GOP will provide for a streamlined implementation of 40 CFR 64. Traditionally, GOPs have been used to codify applicable requirements for specific types of sites (e.g., Oil and Gas, Bulk Fuel Terminal, Municipal Solid Waste Landfill, and Site-Wide). However, a CAM GOP will address only CAM requirements. A CAM GOP will contain emission limitations or standards and corresponding monitoring options determined by the executive director to satisfy 40 CFR 64. For each emission limitation or standard, permit holders may choose an appropriate monitoring option depending on the characteristics of the emission unit or control device. To provide the permit holder the flexibility to use monitoring for one emission limitation or standard to satisfy CAM requirements for another, the executive director will incorporate monitoring options from applicable requirements that satisfy CAM into the CAM GOP, as appropriate. As permit holders apply to use a CAM GOP, the executive director will review the appropriateness of any monitoring option selected, as well as any additional, site-specific requirements that may be necessary to satisfy 40 CFR 64. Once approved, the monitoring option will be codified in the federal operating permit. For permit holders operating under traditional GOPs and utilizing a CAM GOP, the approved monitoring options become representations under which the permit holder shall operate. Each CAM GOP, and the CAM monitoring options it contains, will be subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition, consistent with the procedures in Subchapter F, concerning General Operating Permits.

Because the commission recognizes that the CAM GOP approach may not be appropriate in all cases, the adopted rules allow permit holders the flexibility to submit a “case-by-case” CAM plan for review and approval by the executive director. Therefore, use of the CAM GOP approach will be optional. However, the information required to be in a “case-by-case” CAM plan application may be more than that required to be in a CAM GOP application for the primary reason that the executive director will be evaluating its contents for the first time. For example, while a CAM GOP will be evaluated by the executive director, EPA, affected states, and the public before a permit holder submits an application with a CAM GOP monitoring option from the CAM GOP, the monitoring plan submitted in a CAM “case-by-case” application is not subject to similar review before being submitted to the executive director for approval. Furthermore, much of the information required in a CAM “case-by-case” application will already be contained in the compliance assurance monitoring GOPs. A detailed discussion of Subchapter H containing the requirements for a CAM GOP and a “case-by-case” CAM plan follows.

SUBCHAPTER H: COMPLIANCE ASSURANCE MONITORING

The sections implementing CAM are contained in new Subchapter H, concerning Compliance Assurance Monitoring. The commission also amended §122.10 to define terms applicable to CAM. These terms are discussed as they appear in Subchapter H and in the context in which they are used. Terms from 40 CFR 64 were added to §122.10 where needed to explain Subchapter H, unless already addressed in Chapter 122.

The commission adopts §122.700, concerning Implementation of compliance assurance monitoring. The implementation approach in §122.700 creates two methods for addressing CAM requirements in permits or authorizations to operate: (1) CAM GOP; and (2) the CAM case-by-case determination. Either method may be used to establish CAM requirements and both methods are designed to satisfy 40 CFR 64. The commission also defined the terms “Compliance assurance monitoring general operating permit (CAM GOP)” and “Compliance assurance monitoring (CAM) case-by-case determination” in §122.10.

The term “Compliance assurance monitoring general operating permit (CAM GOP)” is defined in §122.10(4) as a GOP issued under Subchapter F, concerning General Operating Permits, which provides monitoring options established by the executive director to satisfy Subchapter H, concerning Compliance Assurance Monitoring. This definition is added to distinguish GOPs that are designed to satisfy CAM requirements from traditional general operating permits, which are used to codify all applicable requirements for specific types of sites. 40 CFR 64 does not contain procedures for developing CAM GOPs; therefore, the commission adopted Subchapter H to address these procedures. A CAM GOP will contain a list of emission limitations or standards that are subject to Subchapter H. Associated with each emission limitation or standard will be monitoring options established by the executive director to satisfy CAM. A CAM GOP will be subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition as are all GOPs when initially issued under Subchapter F. The executive director plans to develop multiple CAM GOPs, each CAM GOP addressing different groups of applicable requirements. Permit holders may select an appropriate monitoring option from a CAM GOP and submit an application to the executive director for

approval to use the option to satisfy CAM requirements. If approved, the monitoring option will be codified in the federal operating permit. For permit holders operating under traditional GOPs and utilizing a CAM GOP, the approved monitoring options become representations under which the permit holder shall operate. The commission is also providing flexibility in Subchapter H to allow permit holders to request a CAM case-by-case determination. In some cases, due to unique site-specific circumstances, the monitoring options contained in a CAM GOP may not be appropriate for a specific emission unit or control device. In other cases, the permit holder may just prefer to develop a site-specific monitoring approach. In addition, some applicable requirements may apply to a limited number of emission units across the state and developing monitoring options for these applicable requirements for inclusion in a CAM GOP may not be resource-efficient for the executive director.

Section 122.10(3) defines the term “Compliance assurance monitoring (CAM) case-by-case determination” as a monitoring plan designed by the permit holder and approved by the executive director to satisfy 40 CFR 64. This definition was added to distinguish between a CAM GOP and a “case-by-case” determination. Once approved, the “case-by-case” monitoring plan will be incorporated into the federal operating permit. Because 40 CFR 64 focuses on a “case-by-case” approach, the commission chose not to adopt Chapter 122 rule language to define this approach. Instead, the commission relies on specified sections of 40 CFR 64 for implementing the “case-by-case” approach. In the proposed rule, these sections of 40 CFR 64 were identified in §122.700. These sections are more appropriately identified in other sections of Subchapter H and are now identified in §§122.706, 122.708, and 122.714. In the interest of providing consistency with the existing Federal Operating

Permit Program under Chapter 122, all permit holders, regardless of the implementation approach, will determine applicability using §122.702, concerning Compliance Assurance Monitoring Applicability, will submit applications in accordance with the schedules in §122.704, concerning Compliance Assurance Monitoring Application Due Dates, and must comply with §122.708, concerning Procedures for Incorporating Compliance Assurance Monitoring Requirements. Section 122.712, concerning General Terms and Conditions for Compliance Assurance Monitoring, applies to all permit holders because it contains general terms and conditions potentially applicable to both case-by-case determinations and CAM GOPs. Section 122.716, concerning Quality Improvement Plans, applies to all permit holders in order to provide consistency in implementation.

The commission recognizes that, in some cases, 40 CFR 64 and Chapter 122 use different terms to describe the same concept. This difference in terminology exists because Texas developed its federal operating permit program before the promulgation of 40 CFR 64. To address these differences and maintain consistency with Chapter 122, the commission adopts §122.700(b), which states that references in 40 CFR 64 to 40 CFR 70 shall be satisfied by the requirements of Chapter 122. For example, the commission uses the Chapter 122 term “deviation” instead of the 40 CFR 64 terms “excursion” and “exceedance.” The commission believes that the Chapter 122 definition of deviation alleviates the necessity of incorporating into Chapter 122 the 40 CFR 64 definitions for exceedance and excursion. According to 40 CFR 64, exceedance means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the

case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring. Excursion means a departure from an indicator range established for monitoring under 40 CFR 64, consistent with any averaging period specified for averaging the results of the monitoring. Deviation, as defined in Chapter 122, is any indication of noncompliance with a term or condition of a permit, as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit. All three terms define instances when an emission unit may not be in compliance with an applicable emission limitation or standard. However, the commission notes that deviations, including excursions and exceedences, are not necessarily violations. The commission believes that the definition of deviation is sufficiently broad to encompass the terms “exceedance” and “excursion”. Furthermore, although 40 CFR 64 defined these two separate terms, the response to each condition is the same and the two terms are always used together. For example, under 40 CFR §64.7(d), a permit holder would respond to excursions and exceedences in the same manner. Therefore, the commission believes that making a distinction between situations which indicate that emissions are exceeding an emission limitation or standard and situations where an indicator of performance is outside the bounds of proper operation is unnecessary. Also, consistent with the Chapter 122 use of the term deviation, the commission adopts the term “deviation limit,” instead of adopting the 40 CFR 64 term “indicator range.”

The commission adopts §122.702 to address CAM applicability. CAM is applicable to emission units that satisfy each of the following criteria. First, the emission unit must be located at a major source subject to Chapter 122 and not be an exempted utility unit under §122.702(d). Second, the emission

unit must be subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement, except as noted in §122.702(c). Third, the emission unit must use a control device to achieve compliance with the emission limitation or standard in the applicable requirement. Finally, the emission unit must have a pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source. The applicability criteria for each emission unit must be considered separately with respect to each air pollutant (i.e., on a pollutant-by-pollutant basis).

Because use of a control device is important in determining applicability under §122.702, the commission defines the term “control device” in §122.10(6) and makes clear in §122.702(a) that the term “control device,” as used in Subchapter H, shall have the meaning defined in §122.10(6). 30 TAC §101.1, concerning Definitions, also contains a definition in §101.1(18) for control system or control device; however, the definition in §122.10(6) only applies to Subchapter H. The definition for §122.10(6) is necessary because EPA specifically excluded inherent process equipment from the 40 CFR 64 definition of control device and §101.1(18) does not. The control device definition in §122.10(6) is consistent with 40 CFR 64; however, for simplicity, the §122.10(6) definition combines the 40 CFR 64 definitions of control device and inherent process equipment.

Another important concept in §122.702 is the determination of CAM applicability on a pollutant-by-pollutant basis. In 40 CFR §64.1, EPA states that CAM applies to “pollutant-specific emission units” and defines the term as an emissions unit considered separately with respect to each regulated air

pollutant. Rather than define in Chapter 122 the term “pollutant-specific emission unit,” the commission believes that §122.702(a) accomplishes the same result. Section 122.702(a) states that for purposes of CAM applicability, each emission unit shall be considered separately with respect to each air pollutant. The following example illustrates how Subchapter H applies on a “pollutant-by-pollutant” basis.

Example: A permit holder in Harris County has an emission unit located at a site which is a major source. The emission unit emits particulate matter (PM), sulfur dioxide (SO₂), nitrogen oxides (NO_x), and carbon monoxide (CO). The emission unit is subject to applicable requirements that contain emission limitations or standards for PM, SO₂, and NO_x emissions. The emission unit is equipped with a control device to comply with the emission limitations or standards regulating PM and NO_x. The emission unit has a pre-control device potential to emit 50 tons per year of PM and 30 tons per year of NO_x. The major source threshold in Harris County for PM and NO_x is 100 tons per year and 25 tons per year, respectively. The major source threshold is 25 tons per year, because Harris County is a severe ozone nonattainment county and NO_x is a precursor to ozone.

The emission unit is not subject to CAM for PM because the emission unit’s pre-control device potential to emit PM is less than the Harris County major source threshold for PM. The emission unit is not subject to CAM for SO₂ because the emission unit is not equipped with a control device which is used to comply with the applicable emission limitations or standards for SO₂. The emission unit is not subject to CAM for CO because the emission unit is not subject to any applicable requirements that contain

emission limitations or standards for CO. However, the emission unit is subject to CAM with respect to NO_x because it satisfies all of the CAM applicability criteria in §122.702(b).

Consistent with 40 CFR §64.2(a), §122.702(b)(1) applies whether the emission unit is subject to an emission limitation or standard for an air pollutant, or surrogate thereof. The inclusion of the clause “or surrogate thereof” is to address situations in which an emission limitation or standard is expressed in terms of a pollutant (or other surrogate) that is different from the air pollutant that is being controlled (62 FR 54912). An example of a surrogate for an emission limitation is an emission limit expressed in terms of opacity rather than PM.

40 CFR §64.2(b) provides exemptions for several emission limitations and standards, and backup utility power emission units. Sections 122.702(c) and (d) exempt these same emission limitations or standards from Subchapter H, with the following additions for clarity. Section 122.702(c)(7) exempts emission limitations or standards, in addition to those identified in 40 CFR 64, that EPA identifies in guidance as exempt from CAM. This exemption will allow the regulated community to take advantage of exemptions that EPA identifies in guidance for 40 CFR 64. For example, EPA states in its Compliance Assurance Monitoring Technical Guidance Document issued August 1998 that the amendments to 40 CFR 61, Subpart L are exempt from CAM although the original emission limitations or standards were proposed before November 15, 1990. Section 122.702(c)(8) also exempts emission limitations or standards regulating fugitive emissions to be consistent with EPA’s 40 CFR 64 preamble which states that “fugitive emissions are not subject to any specific part 64 monitoring requirements” (62 FR 54909).

The commission adopts §122.704 to address CAM application due dates. Section 122.704 contains application due dates for permit holders applying to use a monitoring option selected from a CAM GOP or applying to use a CAM case-by-case determination. The implementation mechanism selected does not affect the due date of an application. An application due date is dependent upon three events: the date an emission unit becomes subject to Subchapter H, the date the operating permit is initially issued or authorization to operate granted for the site, and the date the executive director issues a CAM GOP containing an emission limitation or standard applicable to the emission unit. A permit holder with an emission unit subject to CAM before the issuance date of a CAM GOP containing an applicable emission limitation or standard must submit an application no later than 30 days after the second permit anniversary (of the permit or the authorization to operate for the site) following the issuance of the CAM GOP. A permit holder with an emission unit that becomes subject to CAM after the issuance date of an applicable CAM GOP must submit an application no later than 30 days after the second permit anniversary (of the permit or the authorization to operate for the site) following the date that the emission unit became subject to CAM. This application submittal schedule should provide permit holders the necessary time for budgeting, capital expenditures, installation of equipment, and testing.

The commission defines “Permit anniversary” in §122.10(18) as the date that occurs every 12 months after the initial permit issuance, the initial granting of the authorization to operate, or renewal. For example, a permit issued on January 1, 1999 has a permit anniversary every January 1. This concept already exists in Chapter 122; however, the commission defined the term to simplify §122.704. Since “Permit anniversary” is a defined term, the commission amended other sections of Chapter 122 to

substitute “permit anniversary” for the phrase “12-month period after initial permit issuance” or “12-month period after permit issuance or renewal.” The affected sections are §122.131(d), concerning Phased Application Process for Initial Applications; §122.213(d), concerning Procedures for Administrative Permit Revisions; and §122.217(e), concerning Procedures for Minor Permit Revisions. The amendments do not change the time frame for submitting information under these sections.

The commission considered several factors when developing the schedule for application due dates. Due to the technical requirements in 40 CFR Part 64, compliance with CAM may require permit holders to purchase and install new equipment or conduct performance testing. The application submittal schedule should allow permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM requirements. Furthermore, the schedule allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM GOPs issued over time. Finally, under the schedule, permit holders will submit applications to

the executive director in manageable numbers throughout each calendar year. The executive director will be able to review these applications in a more timely fashion than if all applications were due at the same time.

The following hypothetical examples are provided to help the reader understand the application submittal schedule. The dates assigned to the events in the following examples are provided for explanatory purposes only and do not reflect the actual or anticipated dates of such events.

Example 1: On January 1, 1999, the executive director issues a federal operating permit for Emission Unit One (EU 1), an emission unit which satisfies all of the CAM applicability criteria in §122.702. The renewal date for the permit is January 1, 2004. On December 1, 2000, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 1 is subject.

Example 1 Discussion: Section 122.704(1) states that an application is due no later than 30 days after the second permit anniversary following issuance of an applicable CAM GOP if an emission unit becomes subject to CAM before issuance of the CAM GOP. Since the CAM GOP was issued on December 1, 2000, the permit holder must identify the second permit anniversary date (of the permit under which EU 1 operates) after December 1, 2000 to determine when the application is due. The permit was issued on January 1. Thus, the first permit anniversary date after issuance of the CAM GOP is January 1, 2001 and the second permit anniversary date after issuance of the CAM GOP is

January 1, 2002. In this example, an application must be submitted no later than 30 days after January 1, 2002--in other words, January 31, 2002.

Example 2: On June 1, 1999, the executive director issues a federal operating permit for Emission Unit Two (EU 2). The renewal date for the permit is June 1, 2004. On December 1, 2000, the executive director issues a CAM GOP containing an emission limitation or standard to which EU 2 is subject; however, EU 2 doesn't meet all of the applicability criteria as of December 1, 2000. On March 1, 2001, EU 2 becomes subject to CAM because it now satisfies all of the applicability criteria in §122.702 as the result of a decrease in the major source threshold in the county in which EU 2 operates.

Example 2 Discussion: Section 122.704(2) states that an application is due no later than 30 days after the second permit anniversary following the date that the emission unit becomes subject to CAM. Since EU 2 became subject to the rule on March 1, 2001 (i.e., the date of the decrease in the major source threshold for the county), the permit holder must identify the second permit anniversary date (of the permit under which EU 2 operates) after March 1, 2001 to determine when an application is due. The permit was issued on June 1. Thus, the first permit anniversary date after March 1, 2001 is June 1, 2001, and the second permit anniversary date after March 1, 2001 is June 1, 2002. In this example, an application must be submitted no later than 30 days after June 1, 2002--in other words, July 1, 2002.

Example 3: On March 1, 2000, the executive director issues a single federal operating permit for Emission Unit Three (EU 3) and Emission Unit Four (EU 4) which are subject to CAM per §122.702.

The renewal date for the permit is March 1, 2005. EU 3 and EU 4 share a control device to comply with different emission limitations and standards. On December 1, 2000, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 3 is subject. On June 1, 2001, the executive director issues a CAM GOP containing the emission limitation or standard to which EU 4 is subject.

Example 3 Discussion: The permit holder must submit an application for EU 3 by March 31, 2002 and an application for EU 4 by March 31, 2003, respectively (see Example 1). The purpose of this example is to demonstrate the applicability of §122.704(3) and to illustrate that each emission limitation is to be evaluated separately when determining the application due date for an emission unit. As this example shows, emission units operating under the same federal operating permit and sharing the same control device may have different application submittal dates.

Example 4: On July 1, 2002, the executive director issues a federal operating permit for Emission Unit Four (EU 4), an emission unit which satisfies the CAM applicability criteria in §122.702 before the issuance of the CAM GOP applicable to that emission unit. The renewal date for the permit is July 1, 2007. Six months before the permit issuance date of July 1, 2002, the executive director issued a CAM GOP on January 1, 2002 which contains the emission limit or standard to which EU 4 is subject.

Example 4 Discussion: Section 122.704(1) is applicable to this situation. It states that for an emission unit that becomes subject to Subchapter H on or before the issuance date of a CAM GOP containing an

emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following issuance of the CAM GOP. In this example, the first permit anniversary following issuance of the CAM GOP is July 1, 2003; the second, July 1, 2004. Therefore, the permit holder must submit a CAM application for EU 4 no later than July 31, 2004.

The commission adopts §122.706(a), which identifies the minimum information that must be contained in an application for a CAM GOP. This information includes the monitoring option, the deviation limit (discussed in the following paragraphs), and the justification for the deviation limit. The executive director requires this information in order to review and approve the CAM requirements for an emission unit using a CAM GOP. As required by 40 CFR 64, the monitoring option will include, among other things, the monitoring of one or more indicators of performance (such as emissions, control device parameters, process parameters, or inspection and maintenance activities). Thus, the monitoring option will involve monitoring direct emissions or some type of parameter, such as temperature or pressure drop and/or performing inspection and maintenance activities. Unless defined by the monitoring option selected, the permit holder will submit a deviation limit that will be used to identify the point at which the monitored parameter indicates a potential problem with the operation of the control device or emission unit.

The term "Deviation limit" is defined in §122.10(8) as a designated value(s) or conditions(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the

indicator of performance shall be considered a deviation, as defined in §122.10(7). Examples of deviation limits are a minimum pressure drop, an open valve, or the results of an inspection maintenance program. The following example further explains the term “Deviation limit.”

Example: An emission unit uses a scrubber to comply with an applicable emission limitation or standard. A performance test indicates that when the pressure drop across the scrubber is at or above 25 inches of water, the emission unit is in compliance with the emission limitation or standard. In this example, the indicator of performance is pressure drop and the deviation limit is a pressure drop of 25 inches of water. Operation of the scrubber with a pressure drop across the scrubber of 25 inches of water or above is indicative that the emission unit is in compliance with the applicable emission limitation or standard. However, if monitoring of the pressure drop indicated a value, for example, of 20 inches of water, the scrubber would be operating outside the boundary established for the indicator of performance and this event would be considered a deviation.

Some monitoring options contained in a CAM GOP may have a deviation limit established in the CAM GOP. If this is not the case, the permit holder will submit a proposed deviation limit and supporting justification for approval by the executive director in accordance with §122.706(a)(1)(E). The deviation limit will be based on information about the specific operation of the control device and emission unit. As specified in §122.706(a)(3), the permit holder will typically use performance testing, engineering calculations, historical data, and manufacturer’s recommendations to justify the proposed deviation

limit. However, the CAM GOP may more specifically define the approach for justifying the deviation limit or provide alternatives to those specified in Subchapter H.

As required by 40 CFR §64.3(d)(1), §122.706(a)(4) specifies that owners or operators of emission units subject to applicable requirements that require continuous emission monitoring systems (CEMS), continuous opacity monitoring systems (COMS), or predictive emission monitoring systems (PEMS) must submit a CAM GOP monitoring option that includes the use of the CEMS, COMS, or PEMS to satisfy CAM requirements for the other emission limitations or standards that are subject to CAM for that particular emission unit. Since Subchapter H applies on a pollutant-by-pollutant basis, this requirement also applies on a pollutant-by-pollutant basis. For example, a NO_x CEMS would be used for NO_x emission limits that apply to the emission unit but would not be used for SO₂ emission limits. Consistent with 40 CFR 64, the commission defined the term “Predictive emission monitoring system (PEMS)” in §122.10(24) as a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard. The term will only apply to Subchapter H. The commission defined PEMS because this is generally a less understood form of monitoring than that of CEMS or COMS.

The commission adopts §122.706(b), which identifies the minimum information that must be contained in an application for a CAM case-by-case determination. As discussed previously, 40 CFR 64 focuses on a “case-by-case” approach; therefore, rather than adopt Chapter 122 rule language to define the information that a permit holder must submit for a CAM case-by-case determination, the commission is

requiring permit holders to submit an application for a CAM case-by-case determination in accordance with 40 CFR §64.3 (Monitoring Design Criteria) and 40 CFR §64.4 (Submittal Requirements).

Section 122.708 contains the procedures for incorporating CAM requirements. In the proposal for this rulemaking, the commission proposed a definition for “Enforceable general operating permit application.” However, as discussed in the response to comments, that definition has been deleted from the final rule. In place of the definition, the commission revised §122.140 to specify the portions of CAM GOP and periodic monitoring GOP applications that become conditions under which a permit holder shall operate. This approach builds upon the existing concept of having portions of the application for traditional GOPs become conditions under which the permit holder shall operate. For traditional GOPs, §122.140(2) states that upon the granting of an authorization to operate under a GOP, applicability determinations and the bases for the determinations in a GOP application become conditions under which a permit holder shall operate. For sites that operate under permits other than traditional GOPs, CAM and periodic monitoring requirements will reside in those permits. With respect to sites operating under traditional GOPs, upon granting of the authorization to operate, these CAM representations, as noted in §122.140(3), become conditions under which the permit holder shall operate. The commission proposed amendments to the following sections of Chapter 122 to accommodate the term “enforceable general operating permit application”: §122.10(3), General Definitions; §122.134(b)(5), Complete Application; §122.140(2), Representations in Application; §122.143(15) and (17), General Terms and Conditions; §122.502(b) and (f), Authorization to Operate; §122.503(a)(1) and (g), Application Revisions for Changes at a Site; §122.504(b)(1), (e), and (g)

Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or General Operating Permit is Revised or Rescinded; and §122.505(f)(1), Renewal of the Authorization to Operate Under a General Operating Permit. Since the definition of “Enforceable general operating permit application” has been deleted from the final rule, these amendments are unnecessary and have been removed from the final rule. In addition, all references to enforceable GOP application in Subchapter H have been removed from the final rule.

Also, the commission amended §122.143(17) and §122.502(b) to clarify that representations in GOP applications for CAM and periodic monitoring, as specified in §122.140(3), are conditions under which the permit holder shall operate. Similarly, the commission introduced §122.503(a)(2) and (b)(5) and 122.504(a) and (a)(1)(D) to clarify that a permit holder shall submit information about a change to the CAM or periodic monitoring information specified in §122.140(3) by revising the CAM application. Section 122.504(b)(4) now clarifies that a permit holder need not reapply for a revised GOP if the CAM or periodic monitoring information specified in §122.140(3) is unchanged. The references to “updated application” in §122.503 and §122.504 were deleted because the distinction between an “application” and an “updated application” to operate under a GOP is no longer necessary because of the amendments to §122.140(3) previously discussed.

The specific procedures for incorporating CAM requirements into federal operating permits and GOP applications depend on whether the permit holder is applying for a CAM case-by-case determination or a CAM GOP and whether the site is permitted under a GOP or a federal operating permit other than a

GOP. Section 122.708(a) specifies that permit holders applying for a CAM case-by-case determination must comply with §122.201, concerning Initial Permit Issuance, or §122.221(b) and (c), concerning Procedures for Significant Permit Revisions, as well as 40 CFR §64.3 and 40 CFR §64.4, as previously discussed. The procedural requirements associated with initial issuance and significant revisions are the same. Owners or operators of emission units operating under a traditional GOP who choose to submit a CAM case-by-case determination will comply with the procedures for initial issuance of a federal operating permit other than a GOP because traditional GOPs, by their nature, apply to a broad class of emission units and cannot be used to accommodate “case-by-case” determinations. Once a CAM case-by-case determination is approved by the executive director, the site will be issued a federal operating permit other than a GOP. Owners and operators of emission units operating under all other federal operating permits who submit a CAM case-by-case determination will be subject to the significant permit revision procedures in §122.221(b) and (c). By requiring compliance with the initial issuance procedures in §122.201 or the significant permit revision procedures in §122.221(b) and (c), the commission ensures that all CAM case-by-case determinations satisfy the Chapter 122 procedural requirements of public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition. In addition, under §122.219, concerning Significant Permit Revisions, the incorporation of CAM requirements into a federal operating permit through a CAM case-by-case determination will constitute a significant change to monitoring because permit holders applying for a CAM case-by-case determination have significant discretion over their monitoring requirements. The EPA states in the preamble to the proposed Consolidated Air Rule that an instance where a permit

holder has significant discretion over the monitoring to be contained in a federal operating permit constitutes a significant permit revision (63 FR 57787).

Section 122.708(b)(1) applies to permit holders operating under a traditional GOP and applying for a CAM GOP. Consistent with the procedures of Subchapter F, provided the permit holder submits an application under §122.706 and the representations in the GOP application, as specified in §122.140(3), which provide for compliance with the requirements of Subchapter H, the executive director will grant an authorization to operate.

Section 122.708(b)(2) specifies that permit holders operating under a permit other than a GOP and applying for a CAM GOP must comply with §122.217(f) and (g), concerning Procedures for Minor Permit Revisions. This type of change will not qualify as a significant permit revision nor as an administrative permit revision and therefore qualifies as a minor permit revision under §122.215, concerning Minor Permit Revisions. These changes are not significant permit revisions because, as previously discussed, significant permit revisions to monitoring requirements are those over which the permit holder has significant discretion. Because the permit holder is selecting a monitoring option already determined by the executive director to satisfy CAM, the permit holder does not have significant discretion over those requirements. In addition, each CAM GOP is subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition; therefore, it is unnecessary to repeat these procedural requirements using the significant permit revision process.

Section 122.708(c) is provided to address situations where CAM requirements are incorporated into permits at the time of permit renewal. In these cases, the procedural requirements of permit renewal, which are equivalent to the initial permit issuance and significant permit revision procedures, will be used to incorporate CAM requirements into a permit.

Section 122.708(a), (b), and (c) apply only to the initial incorporation of CAM requirements. Section 122.708(d) clarifies that revisions to CAM requirements are governed by Chapter 122, Subchapter C, concerning Permit Revisions, or Subchapter F, concerning General Operating Permits, as appropriate. To allow the executive director to evaluate the technical merits of proposed changes to a deviation limit, in most cases, permit holders will not be allowed to operate under the proposed change until the permit or authorization to operate under a GOP is revised. A permit holder will be allowed to operate a change to a deviation limit prior to revision if the change is necessary as the result of the promulgation or adoption of an applicable requirement. Deviation limits established prior to a change in an applicable requirement may be inconsistent with the applicable requirement after the change. In this case, permit holders will be allowed to operate prior to revision because of the need to comply with the changed applicable requirement.

The following examples are provided to help the reader understand the application submittal procedures:

Example 1: If the permit holder is operating under a general operating permit (e.g., Oil and Gas GOP) and chooses to submit a case-by-case determination to incorporate the CAM requirements, the permit

holder will submit a CAM application for a new permit (i.e., site operating permit (SOP) or temporary operating permit (TOP) as applicable) as required by §122.708(a)(1).

Example 2: If the permit holder is operating under an SOP or a TOP and chooses to submit a case-by-case determination to incorporate the CAM requirements, the permit holder will submit a CAM application for a significant permit revision to the SOP or TOP as required by §122.708(a)(2).

Example 3: If the permit holder is operating under a GOP (e.g., Oil and Gas GOP) and chooses to submit an application for a CAM GOP to incorporate CAM requirements, the permit holder will submit a CAM application to revise the GOP application for the site as required by §122.708(b)(1).

Example 4: If the permit holder is operating under an SOP or TOP and chooses to submit an application for a CAM GOP to incorporate CAM requirements, the permit holder will submit a CAM application for a minor permit revision to the SOP or TOP as required by §122.708(b)(2).

As a result of the adoption of §122.708, some other sections of Chapter 122 were amended. First, because Subchapter H addresses procedures for revising federal operating permits and GOP applications to incorporate CAM requirements, the commission deleted the reference to Subchapter C contained in §122.10(21), definition of “Permit revision.” Second, the commission amended §122.217(b), concerning Procedures for Minor Permit Revisions, by adding the phrase “or, as appropriate, the revision of a compliance assurance monitoring general operating permit or periodic monitoring general

operating permit.” Changes to a permit resulting from the revision of a CAM GOP or periodic monitoring GOP are not significant because the permit holder does not have significant discretion over the monitoring options contained in a compliance assurance monitoring or periodic monitoring general operating permit. Third, the commission amended §122.210, concerning General Requirements for Revisions, by adding subsection (b)(5), which states “the revision of a compliance assurance monitoring or periodic monitoring general operating permit.” This change is necessary to make §122.210 consistent with the change to §122.217(b). Finally, the commission amended §122.503(c) to clarify that revisions to GOP application in accordance with §122.503 may not be operated without prior approval if the changes to the application are changes to a deviation limit as noted in §122.608(e) and §122.708(d).

Section 122.710 contains the content requirements for each CAM GOP. Consistent with 40 CFR §64.3(a), §122.710(a)(1) requires that each CAM GOP contain indicators of performance, which may include, but are not limited to, direct or predicted emissions, process and control device parameters that affect control device efficiency or emission rates, and recorded findings of inspection and maintenance activities conducted by the permit holder. Section 122.710(a)(2) specifies that each CAM GOP will contain a deviation limit or procedures for establishing a deviation limit for each indicator of performance. Typically, because the deviation limit will be based on emission unit or control device specific characteristics, a CAM GOP will contain procedures for the permit holder to establish a deviation limit. In certain instances, a CAM GOP may define a deviation limit. For example, a minimum temperature may be specified as the deviation limit for an incinerator burning a class of volatile organic compounds.

Sections 122.710(a)(3) and 122.712(a)(1) are intended to satisfy the requirements of 40 CFR §64.3(b)(1), (2), and (3), which state that monitoring must include specifications that provide for obtaining data that are representative of the emissions or parameters being monitored, verification procedures to confirm the operational status of new or modified monitoring equipment, and quality assurance and control practices that are adequate to ensure the continuing validity of data, respectively. In 40 CFR 64, EPA emphasizes the use of manufacturer's recommendations for establishing CAM requirements. For example, 40 CFR §64.3(b)(3) states that an owner or operator shall consider manufacturer's recommendations in developing quality assurance and control practices and 40 CFR §64.4(b) states that an owner or operator must provide justification for differences from the manufacturer's recommendations if the permit holder provides alternatives.

Consistent with 40 CFR §64.3(b)(4), §122.710(a)(4) requires that each CAM GOP monitoring option specify an averaging period for the purpose of determining whether a deviation has occurred, if appropriate.

Consistent with 40 CFR §64.3(b)(4), §122.710(a)(5) requires that each monitoring option contain specifications for the minimum monitoring frequency. As required by 40 CFR 64, §122.710(a)(5) requires the collection of four or more data values equally spaced over each hour for each emission unit with a post-control potential to emit greater than or equal to the amount for the emission unit to be classified as a major source. The executive director may approve a reduced data collection frequency for these large emission units in certain circumstances, as provided in §122.710(a)(5). However, the

monitoring must include some data collection at least once per 24-hour period. As required by 40 CFR 64, all other emission units subject to 40 CFR 64 must be monitored at least once per 24-hour period.

Section 122.710(b) specifies that CAM requirements contained in a CAM GOP shall be designed to provide a reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device, which is consistent with 40 CFR 64.

Section 122.710(c) states that a CAM GOP may require the submission of an application for a CAM case-by-case determination for a particular emission limitation or standard because developing CAM GOPs to address those emission limitations or standards may not be resource-efficient. For example, some emission limitations or standards may apply to very few emission units in the state.

Section 122.712(a) specifies the general terms and conditions that must be contained in a CAM GOP. Permit holders choosing to use the CAM GOP implementation option must comply with these general terms and conditions in addition to the specific monitoring options and deviation limits in the federal operating permit or GOP application. As previously discussed, §122.712(a)(1) in conjunction with §122.710(a)(3) will be used to implement the requirements of 40 CFR §64.3(b)(1), (2), and (3).

Section 122.712(a)(2) is consistent with 40 CFR §64.7(b), which requires an owner or operator to properly maintain the monitoring systems and to maintain, if necessary, parts for routine repairs of the monitoring equipment. As stated in EPA's CAM Technical Reference Guidance Document, issued

August 1998, spare parts may be maintained by local vendors if there is no significant impact on immediate availability.

Section 122.712(a)(3) is consistent with 40 CFR §64.7(c) and requires that monitoring be conducted according to the prescribed frequency for all emission unit operating periods, unless the monitoring cannot be conducted because of monitoring malfunctions as defined in §122.712(a)(3)(D), associated repairs, or required quality assurance or control activities. Data collected during such periods is not to be used for purposes of Subchapter H, including data averages and calculations, or fulfilling a data availability requirement. However, based on 40 CFR §64.9(a), the permit holder must maintain records of the beginning date and time, ending date and time, and cause for monitoring downtime incidents. This record requirement ensures that gaps in valid monitoring data are explained. For this same reason, §122.712(a)(3) also requires permit holders to maintain a record of any intervals during which data was not collected.

Section 122.712(a)(4) states that all incidents of monitoring downtime recorded under §122.712(a)(3)(B) shall be reported in accordance with §122.145, concerning Reporting Terms and Conditions.

Section 122.712(a)(5) is consistent with 40 CFR §64.7(d), which specifies the requirements for responding to deviations by requiring the owner or operator to take corrective action to restore normal operation, minimize emissions, and prevent the recurrence of a deviation.

Section 122.712(a)(6) provides that if the permit holder identifies a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not indicate a deviation while providing valid data or the results of compliance or performance testing document a need to modify the existing CAM requirements, the permit holder shall notify the executive director within 30 days. If necessary, the permit holder shall apply for a revision to the CAM requirements, or a new permit if appropriate, consistent with the procedures of Subchapter C or F of Chapter 122. This paragraph is consistent with 40 CFR §64.7(e). Nothing in this section is intended to limit the commission's options for taking other enforcement action.

Section 122.712(a)(7) clarifies that CAM requirements are subject to §122.144, concerning Recordkeeping Terms and Conditions, §122.145, concerning Reporting Terms and Conditions, and §122.146, concerning Compliance Certification Terms and Conditions. Section 122.144 satisfies the requirements of 40 CFR §64.9(b) and §122.145 satisfies the requirements of 40 CFR §64.9(a).

As provided for in 40 CFR §64.8(a), §122.712(a)(8) requires a permit holder to comply with the requirements of a quality improvement plan (QIP) as specified in §122.716.

Section 122.712(b) states that where CAM is implemented through a CAM case-by-case determination, the permit will specify which of the general terms and conditions will apply. The commission believes that because the general terms and conditions are based on 40 CFR 64, requirements that must be

codified in the permit, a CAM case-by-case determination will typically include some of the same general terms and conditions as a CAM GOP.

Section 122.714(a) applies to the CAM GOP implementation mechanism. It contains the CAM information that must be included in a federal operating permit or GOP application upon granting of the authorization to operate and is consistent with 40 CFR §64.6(c). The justification for the deviation limit will not be placed in the permit since the justification is supporting information for the deviation limit. For permit holders operating under traditional GOPs and utilizing a CAM GOP, the justification in the GOP application is not a condition with which a permit holder must comply, but is rather supporting information for the deviation limit. Therefore, once the deviation limit is approved, inclusion of the justification in the permit is unnecessary. However, in a manner identical to all other bases for permit content, if the deviation limit established in the permit is invalid due to inaccurate or invalid information, the source may be subject to enforcement action for failure to make proper application. This section also requires that the general and special terms and conditions for CAM GOPs be incorporated into the federal operating permit or approved GOP application. Therefore, these terms and

conditions will become terms and conditions under which the permit holder shall operate. Section 122.714(a)(2) clarifies when a permit holder must begin complying with the CAM requirements codified in a permit or GOP application.

Section 122.714(b) applies to the CAM case-by-case determination implementation mechanism. It stipulates the CAM information that must be included in a federal operating permit. As discussed previously, 40 CFR 64 focuses on a “case-by-case” approach; therefore, rather than adopt Chapter 122 rule language to define the CAM information that will be codified in a permit, the commission is relying on 40 CFR §64.6 (Approval of Monitoring) and 40 CFR §64.7 (Operation of Approved Monitoring) to identify the information that will be codified in a permit.

Section 122.716 provides the executive director the authority to require permit holders to implement quality improvement plans (QIPs). 40 CFR §64.8 establishes that QIPs are optional, at the permitting authorities’ discretion. The commission has chosen to establish QIPs on a “case-by-case” basis, as appropriate. A QIP may be required based on the frequency of deviations, the cause of deviations, the magnitude of deviations, the permit holder’s response to deviations, or other information that indicates that the emission unit or control device is not being maintained and operated consistent with good air pollution control practices. The data to evaluate these criteria will be collected from deviation reports, compliance certifications, site inspections, and any other appropriate sources. Nothing in this section is intended to limit the commission’s options for taking other enforcement action.

Finally, with respect to the implementation of CAM, EPA defines savings provisions in 40 CFR §64.10. The commission believes that §122.161, concerning Miscellaneous, already contains the majority of these requirements. However, the commission amended §122.161 to clarify that CAM and periodic monitoring requirements may not be used to justify the imposition of less stringent monitoring that the required by the TCAA, FCAA, or by an air pollution control agency having jurisdiction. The amendment also clarifies that nothing in Subchapters G and H is intended to limit the commission's authority to impose additional or more restrictive monitoring, recordkeeping, testing, or reporting requirements under other programs.

PERIODIC MONITORING

40 CFR §70.6(a)(3)(i)(B) requires that where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of an emission unit's compliance with the permit. The commission has the authority under §122.142(c) to incorporate periodic monitoring into federal operating permits; however, the commission adopted this rulemaking to amend §122.142(c) so that it tracks the language in 40 CFR §70.6(a)(3)(i)(B).

This rulemaking also establishes procedures to allow for a streamlined implementation of periodic monitoring through the use of periodic monitoring GOPs. Traditionally, GOPs have been used to codify all applicable requirements for specific types of sites; a periodic monitoring GOP will contain

emission limitations or standards subject to periodic monitoring requirements and corresponding monitoring options determined by the executive director to satisfy §122.142(c). For each emission limitation or standard, permit holders may choose an appropriate monitoring option depending on the characteristics of the emission unit or control device. To provide the permit holder the flexibility to use monitoring for one emission limitation or standard to satisfy periodic monitoring requirements for another, the executive director will incorporate monitoring options from applicable requirements that satisfy periodic monitoring into the periodic monitoring GOP, as appropriate. The executive director will review the appropriateness of any monitoring option selected, as well as any additional, site-specific requirements that may be necessary to fulfill the periodic monitoring requirements. Once approved, the monitoring option will be codified in the federal operating permit. For permit holders operating under traditional GOPs and utilizing a periodic monitoring GOP, the approved monitoring options become representations under which the permit holder shall operate. Each periodic monitoring GOP, and the periodic monitoring options it contains, will be subject to public notice, affected state review, notice and comment hearing (if requested), EPA review, and public petition. The use of monitoring GOPs will be particularly valuable for the implementation of periodic monitoring due to the number of different applicable requirements that will require periodic monitoring. However, use of the periodic monitoring GOPs will be optional. The commission recognizes that the periodic monitoring GOP approach may not be appropriate in all cases. Therefore, permit holders have the flexibility to develop a site-specific periodic monitoring plan and submit it to the executive director for approval rather than using a periodic monitoring GOP. A detailed discussion of Subchapter G containing the requirements for the periodic monitoring GOP and periodic monitoring case-by-case determination follows.

SUBCHAPTER G: PERIODIC MONITORING

The sections that were added to Chapter 122 to address periodic monitoring are discussed in the following paragraphs. The commission also amended §122.10 to define terms applicable to periodic monitoring. These terms will be discussed as they appear in Subchapter G and in the context in which they are used.

The commission adopts §122.600, concerning Implementation of Periodic Monitoring, which addresses two approaches for implementing periodic monitoring. Section 122.600(a) discusses the streamlined approach of using periodic monitoring GOPs and periodic monitoring case-by-case determinations. This approach is conceptually similar to the method established under Subchapter H for implementing CAM requirements and is designed to satisfy §122.142(c).

The term “Periodic monitoring GOP” is defined in §122.10(16) as a GOP issued under Subchapter F, concerning General Operating Permits, which provides monitoring options established by the executive director to satisfy Subchapter G, concerning Periodic Monitoring. This definition is added to distinguish between GOPs established to satisfy periodic monitoring requirements and traditional GOPs which have been used to codify all applicable requirements for specific types of sites. The periodic monitoring GOP is modeled after the CAM GOP and is generally based on the same principles, subject to the same procedures, and structured in the same way. Therefore, please refer to the discussion of §122.700(a) for an explanation of this approach.

Under §122.600(a), §122.142(c) may also be implemented using a periodic monitoring case-by-case determination. The term “Periodic monitoring case-by-case determination” is defined in §122.10(15) as a monitoring plan designed by the permit holder and approved by the executive director to satisfy §122.142(c). This definition is added to distinguish between a periodic monitoring GOP and a “case-by-case” determination. Once approved, the monitoring option will be codified in the federal operating permit. For permit holders operating under traditional GOPs and utilizing a periodic monitoring GOP, the approved monitoring options become representations under which the permit holder shall operate. For the same reasons discussed in §122.700, the commission has provided the flexibility for the use of “case-by-case” determinations to satisfy periodic monitoring requirements.

In addition to the streamlined periodic monitoring implementation approach adopted by the commission, the commission has a second approach for incorporating periodic monitoring requirements into federal operating permits. This second approach is codified in §122.600(b). It uses initial permit issuance, permit revision, or permit renewal procedures to incorporate into a permit periodic monitoring requirements for specific emission limitations or standards. However, the commission believes that the streamlined implementation approach will allow for a more efficient use of the executive director’s resources, especially given the number of emission limitations and standards subject to periodic monitoring. Thus, §122.600(b) is not included in this rulemaking to provide the executive director with the authority to incorporate periodic monitoring through this second approach, which is already provided for under Chapter 122 and will continue to be used, but to clarify that there is a second approach for addressing periodic monitoring.

Section 122.600(c) provides that if an emission unit is subject to both CAM and periodic monitoring, the CAM requirements established under Subchapter H can be used to satisfy periodic monitoring. Since the CAM requirements are more stringent than periodic monitoring, an adequate CAM plan will satisfy the periodic monitoring requirements.

The commission adopts new §122.602 to address periodic monitoring applicability. Periodic monitoring potentially applies to any emission unit in an operating permit subject to an applicable requirement; however, Subchapter G will not apply to emission limitations or standards which the executive director has determined contain sufficient periodic monitoring (which may consist of recordkeeping). Consistent with EPA's Periodic Monitoring Guidance document, the commission proposed exempting the following from periodic monitoring: emission limitations or standards proposed by EPA after November 15, 1990 under the FCAA, §111 or §112; emission limitations or standards promulgated under the FCAA, Title IV; and emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device. However, the United States Court of Appeals for the District of Columbia Circuit in *Appalachian Power Company, et al. v. Environmental Protection Agency* (D.C. Cir. #98-1536, April 14, 2000) set aside EPA's "Periodic Monitoring Guidance for Title V Operating Permits Programs" released in September 1998 which contained these exemptions. These same emission limitations or standards are also exempt under 40 CFR Part 64 because they contain monitoring sufficient to satisfy Title V monitoring requirements which include CAM and periodic monitoring. Therefore, the

commission believes it is appropriate to continue to exempt these emission limitations or standards from periodic monitoring. Section 122.602 also provides that the requirements of Subchapter G do not apply to emission limitations or standards specified as exempt from periodic monitoring by EPA. This exemption was included to allow the regulated community to take advantage of any other exemptions that EPA identifies in guidance.

The adopted §122.604 addresses application due dates. Section 122.604(a) applies only to permit holders applying for a periodic monitoring GOP or a periodic monitoring case-by-case determination. Because the application due date schedule for periodic monitoring GOPs and periodic monitoring case-by-case determinations is identical to that for CAM GOPs and CAM case-by-case determinations, the reader is directed to the discussion of §122.704 for an explanation of the application due date schedule.

Section 122.604(b) applies to situations in which the executive director incorporates periodic monitoring into federal operating permits without using a periodic monitoring GOP or a periodic monitoring case-by-case determination, consistent with §122.600(b). Applications submitted under §122.604(b) will typically be required at initial issuance where the executive director identifies emission limitations or standards with no monitoring, recordkeeping, reporting, or testing requirements. They may also be required at permit revision or permit renewal when additional monitoring is required to satisfy periodic monitoring.

The commission adopts §122.606(a), which identifies the minimum information that must be contained in an application for periodic monitoring. Applications for periodic monitoring must contain proposed periodic monitoring requirements which may include one or more indicators of performance, a minimum monitoring frequency, a deviation limit, and any other information necessary to satisfy §122.606(b). Consistent with 40 CFR §70.6(a)(3)(i)(B), §122.606(b) requires that the periodic monitoring requirements submitted in the application be designed to produce data that are representative of the emission unit's compliance with the applicable requirement. In addition, the application will also include any information required by the executive director to evaluate the proposed monitoring requirements as provided for in §122.606(a)(3). The monitoring requirements submitted in an application may be based on monitoring options provided by the executive director. They may also be developed by the applicant for the specific emission unit.

The commission adopts new §122.608, to create procedures for incorporating periodic monitoring requirements into permits and general operating permit applications. The procedures differ depending on the implementation option and the type of federal operating permit under which the emission unit is operating. The procedures for incorporating periodic monitoring using a periodic monitoring GOP or a periodic monitoring case-by-case determination are the same as those used for a CAM GOP and a CAM case-by-case determination, respectively. Therefore, the reader is directed to the discussion of §122.708 for an explanation of the procedures for incorporating periodic monitoring requirements into permits and GOP applications.

Section 122.608(c) addresses one difference in the procedures between CAM and periodic monitoring. This subsection specifies that periodic monitoring requirements that are established under §122.600(b) will be addressed through the initial issuance procedures in §122.201, the procedures in Subchapter F, or the procedures for minor permit revision in §122.217(f) and (g). The use of initial issuance procedures for addressing periodic monitoring requirements established under this approach is consistent with the current approach for incorporating periodic monitoring requirements into permits. In the future, these periodic monitoring requirements may be addressed through the minor permit revision procedures or they may be codified in traditional GOPs under the procedures in Subchapter F.

The adopted §122.610 requires that monitoring options in periodic monitoring GOPs be designed to produce data that are representative of compliance with the applicable requirement, which is consistent with 40 CFR §70.6(a)(3)(i)(B). Section 122.610 also specifies that a periodic monitoring GOP may require the submission of an application for a periodic monitoring case-by-case determination for a particular emission limitation or standard. As discussed in this preamble with respect to §122.710, these “case-by-case” determinations may be appropriate where emission limitations or standards apply to very few emission units in the state.

The adopted §122.612 identifies the periodic monitoring requirements that must be incorporated in a federal operating permit or GOP application. The same elements in the application will be contained in a federal operating permit or GOP application, except the information required by the executive director to evaluate the proposed periodic monitoring requirements. This information is the justification for the

proposed periodic monitoring requirements. The justification for the deviation limit will not be placed in the permit since the justification is supporting information for the deviation limit. For permit holders operating under traditional GOPs and utilizing a CAM GOP, the justification in the GOP application is not a condition with which a permit holder must comply, but is rather supporting information for the deviation limit. Therefore, once the periodic monitoring requirements are approved, inclusion of the justification in the permit is unnecessary. However, in a manner identical to all other bases for permit content, if the deviation limit established in the permit is invalid due to inaccurate or invalid information, then the source may be subject to enforcement action for failure to make proper application. Section 122.612(a)(4) makes clear that applicable special terms and conditions will also be codified in the permit or GOP application. Section 122.612(b) was added in response to a comment. It clarifies when a permit holder must begin complying with the periodic monitoring requirements codified in a permit or GOP application.

OTHER CHANGES TO CHAPTER 122

In addition to the changes to Chapter 122 regarding CAM and periodic monitoring, the commission also amended sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, to address an administrative error in a previous rulemaking, to address recent changes in federal rules, and to address requirements in the TCAA.

The commission deleted the divisions in Subchapter D of Chapter 122. Many of the divisions in Subchapter D contained a single section. Also, many of the division headings were the same as the section headings. These deletions eliminate the redundant nomenclature.

In the definition of “Applicable requirement,” under §122.10, the commission clarified that the asbestos demolition and renovation requirements of 40 CFR 61, Subpart M (National Emissions Standards for Asbestos) and the requirements of 40 CFR 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters) are not applicable requirements. The change is consistent with 40 CFR §70.3(b)(4) as well as the preamble to 40 CFR 64 (62 FR 54917).

In addition, the commission amended the definition of “Emission unit” contained in §122.10 since it was modeled after the definition of “facility” in the TCAA and the definition of “Emissions unit” in 40 CFR 70. First, the commission deleted the word “smallest” from the definition. Second, the amendment clarifies that an appurtenance may be an emission unit.

The commission amended the definition of “Permit” contained in §122.10 to state that the term “permit” when used in Chapter 122 refers to a CAM GOP or Periodic Monitoring GOP only when clearly indicated by the context. This clarification should alleviate any confusion that may have been caused by using the GOP process to implement CAM or periodic monitoring.

Also under §122.10, in the definition of “Provisional terms and conditions,” the commission revised language to clarify that provisional terms and conditions may include requirements that no longer apply. The previous language referred to repealed requirements, which may have implied that the requirements would be repealed through rulemaking; whereas, “Provisional terms and conditions” may be used to address requirements that no longer apply for other reasons, including changes at a site. Subchapters C and F were deleted from the definition of “Provisional terms and conditions” because provisional terms and conditions can be used for CAM and periodic monitoring under Subchapters G and H.

The definition of “Site” in §122.10(29) was revised to clarify that if a research and development operation does not produce products for commercial sale, it may be treated as a separate site from any manufacturing facility with which it is collocated. The current language states that in this case, the research and development operation shall be treated as a separate site. This may imply that the owner or operator would not have the option of including the research and development operation in the same permit as the collocated manufacturing facility, if the research and development operation were a major source and subject to Chapter 122. Therefore, the commission is clarifying that the research and development operation may be, but is not required to be, treated as a separate site.

Under the same section, in the definition of “Stationary source,” the commission clarified that nonroad engines, as defined in 40 CFR 89, are not stationary sources under Chapter 122. This clarification is consistent with the definition of “Stationary source” in FCAA, §302 (concerning Definitions).

The proposed amendments to Chapter 122 published in the *Texas Register* on March 10, 2000 indicated that §122.10(24)(C) would be deleted. Section 122.10(24) (now §122.10(23)) defines the term “Preconstruction authorization.” The proposal to delete §122.10(24)(C) was an error. The commission did not intend to delete that section. Since the commission received no comments in support of the erroneously proposed deletion, the commission is retaining §122.10(23)(C).

The commission amended §122.110 by deleting subsection (b). This amendment addressed recent organizational changes at the agency.

In §122.130(a)(1) and (b)(1) (concerning Initial Application Due Dates), the commission replaced the “and” between “owners and operators” with an “or” to clarify that both the owner and the operator of a site do not have to submit separate applications under this section. Either the owner or the operator of the site may submit an application to satisfy this requirement.

In §122.130(c)(2), the commission clarified that the application required to be submitted after a site becomes subject to the program as the result of an action by the executive director or the EPA, is an abbreviated application. When abbreviated applications are submitted initially, the owner or operator submits the remaining application information upon request by the executive director. This minimizes the number of times the applications must be updated by allowing the executive director to receive the remaining information once staff is prepared to review the application. This clarification is consistent with existing language in §122.132(c).

The commission adopts changes to the title of §122.131 from “Phased Application Process for Initial Applications” to “Phased Permit Detail” and, accordingly, amended the rule text by replacing the phrase “phased application process” with the phrase “phased permit detail process.” This change was made to avoid confusion between the process in §122.131 for phasing detailed applicability determinations into a permit and the process under §122.201(e), which allows the executive director to issue multiple permits for a site. The title “Phased Permit Detail” more accurately reflects the process in §122.131, which, in certain circumstances, allows detailed applicability determinations to be phased into a permit over a period of time. References to this section, as well as references to “phased application process,” in §122.132 and §122.142 were also updated to reflect the title “Phased Permit Detail.”

Adopted §122.139 previously referred to FCAA, §112(i)(5) as relating to “Schedule for Compliance.” Section 122.139 actually relates to “Early Reduction.” The commission has made this correction. Also, the commission amended §122.350 to correct the reference to Title V, which relates to “Permits,” rather than “Permit.”

The commission adopts amendments to §122.161, concerning Miscellaneous, to clarify that the executive director has the authority to administratively void a federal operating permit, or the authorization to operate under a GOP, upon demonstration by a permit holder that a site no longer meets the applicability criteria in §122.120. For example, after issuance of a federal operating permit, a site may limit its potential emissions below major source thresholds. However, the amendment also makes

clear that a site meeting the applicability criteria in §122.120 must have a federal operating permit, regardless of whether a federal operating permit for the site was administratively voided in the past.

The commission adopts corrections to several outdated statutory references in §122.322. References to the Education Code, §21.109 were replaced with Education Code, Chapter 29, Subchapter B; references to 19 TAC §89.2(a) were replaced with 19 TAC §89.1205(a); references to 19 TAC §89.2(g) were replaced with 19 TAC §89.1205(g); and references to 19 TAC §89.2(d) were replaced with 19 TAC §89.1205(d). These revisions updated the statutory references in §122.322, but did not change any existing requirements.

In §122.350(b)(3), the commission adopted rule language which allows the EPA review period and public notice comment period to run concurrently for the issuance or revision of a GOP. By completing the requirements concurrently, the commission will be able to establish a GOP more quickly to fulfill the 40 CFR 70 requirements. Additionally, applicable requirements codified in a GOP may periodically be revised, repealed, or updated. If an applicable requirement contained in a GOP is revised, 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. This situation can cause confusion for the regulated community, the public, and commission enforcement personnel, since the applicable requirements codified in the GOP would necessarily lag behind any recent revisions to the applicable requirements codified in the GOP. By allowing the EPA review period and public notice comment period or public announcement period to run concurrently, a

GOP may be updated more quickly, thereby eliminating a significant time delay in incorporating revisions to the codified applicable requirements. This will assist the regulated community, since permit holders will not have to maintain provisional terms and conditions for lengthy periods of time. The commission emphasizes that this change does not eliminate opportunity for an EPA review period, a public notice comment period, or public announcement period on GOP initial issuances or revisions.

The new §122.501(d)(5) concerns notice requirements for rescissions of GOPs and follows the notice procedures for initial issuance of a GOP, as modified to fit the circumstances of a rescission. For example, since the public notice would concern the rescission of an existing GOP, there would be no draft GOP on which to provide comments. The issue for comment would concern whether it is appropriate or not to rescind the particular GOP.

The commission also adopts §122.501(g), which allows the executive director to combine GOPs. Thus, the executive director can ensure that the number of GOPs is maintained at a manageable level.

Sections 122.501(g) and 122.506(i) also provide that the executive director will publish in the *Texas Register* and on the commission's publicly accessible electronic media notice of the fact that two or more GOPs have been combined.

The commission amended §122.503(c)(3) and §122.504(a)(3)(B) to clarify that a permit holder will be issued a new, not a revised, authorization to operate when changes are made to the GOP application for

a site. Section 122.503(c)(4) was amended to clarify that a permit holder operates subject to the representations identified in §122.140.

The commission amended §122.504 by deleting the phrase “revision or repeal” and replacing it with “promulgation or adoption.” The commission made this change because the terms “promulgation” and “adoption” are inclusive of the terms “revision” and “repeal.” However, the terms “revision” and “repeal” are not inclusive of the terms “promulgation” and “adoption” and this section was intended to address both new rules and regulations, as well as changes to rules and regulations. Also, the commission amended the heading for §122.504 so that it more clearly describes the contents of the section.

In addition, on September 4, 1998, the commission published a proposal in the *Texas Register* (23 TexReg 8987) to amend Chapter 122, Subchapter F authorizing the executive director to issue, revise, and rescind GOPs. Due to an administrative error, 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 could not adopt that portion of §122.506(a). The commission did 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 GOP 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.”

The commission amended §122.506(a) to address the administrative error made on September 8, 1998. Before the issuance, significant permit revision, or rescission of any GOP, the executive director will be required to publish notice of the opportunity for public comment and/or hearing in the *Texas Register* and on the commission’s publicly accessible electronic media. In addition, if the GOP has only regional application, the executive director must publish notice in a newspaper of general circulation in the area affected by the GOP; if the GOP has statewide application, the executive director must publish notice in the daily newspapers of largest general circulation within each of the following metropolitan areas: Austin, Dallas, and Houston. The commission believes that publication in the *Texas Register*, on the commission’s publicly accessible electronic media, and through newspaper notices will provide ample notice to the regulated community and general public concerning the issuance, revision, or rescission of GOPs. The commission adopts rule language which requires publication in Austin, Dallas, and Houston because the commission believes that newspapers in these communities provide greater statewide

coverage than do the Beaumont, Fort Worth, and Houston newspapers originally proposed September 8, 1998.

The commission has also deleted the statements in §§122.502(g), 122.503(i), and 122.505(h) specifying that the following shall not be final action by the executive director, and therefore, are not subject to judicial review: the granting of authorizations to operate under GOPs, revisions to applications for GOPs, and the renewal of authorization to operate under GOPs. The commission repealed the specified subsections because they conflict with Texas Health and Safety Code, §382.032, which states, “A person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not provided, may appeal the action by filing a petition in a district court of Travis County.”

ACID RAIN PERMITS

The acid rain requirements of 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76 were incorporated by reference into Subchapter E of Chapter 122 on November 10, 1997. Since then, EPA has revised 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The commission amended §122.410(a), concerning Operating Permit Interface, to incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76.

EPA offered some options to the states in the revision of 40 CFR 72 (Part 72) regarding acid rain permit issuance procedures. The revised 40 CFR §72.72(b)(1)(v) provides an option for “direct

proposed” procedures which may be used at the discretion of the executive director. In the preamble to the promulgated revised 40 CFR Part 72, EPA clarifies the “direct proposed” procedures as follows: “Under the procedure, a State permitting authority issues simultaneously a draft permit and proposed permit. If no adverse comments are received, the proposed permit is deemed to be issued and, after the period for review by EPA, the executive director issues the final permit” (62 FR 55467). The EPA Part 72 preamble also clarifies that the “Direct proposed” procedures which are available for initial issuance of acid rain permits are also available for significant acid rain permit revisions and acid rain permit reopenings. This option is only available for acid rain permits. Although Subchapter E does not have specific rule language for initial issuance, this option is available since it is being incorporated by reference into this subchapter. The commission also adopts this option for significant revisions and reopenings. However, because Subchapter E specifies the procedures for significant revisions and reopenings rather than relying on Part 72 requirements incorporated by reference, specific language has been added to §122.414(a)(3) and (4) to allow public notice and EPA review to run concurrently. The revisions to §122.414(a)(3) and (4), plus the new procedural option for initial issuance will allow the public notice and EPA review to run concurrently, resulting in a streamlined process. These procedures will be used at the discretion of the executive director to reduce the time required for and simplify the procedures for initial acid rain permit issuance, significant permit revisions, and reopenings for acid rain permits.

Another option offered by EPA is for alternate public notice procedures in the revised section of 40 CFR §72.72(b)(1)(iii) where the “State may, in its discretion, provide notice by serving notice on

persons entitled to receive a written notice and may omit notice by newspaper or State publication.”

The commission recognizes that this is an option that, if properly implemented and defined, could provide adequate public notice. The recent revisions to §382.056(b) by House Bill 801 during the 1999 Legislative Session include a new requirement for newspaper notices to provide instructions for how to get on a mailing list to receive information about an application. These requirements were recently incorporated into §122.320, concerning Public Notice. The commission believes that these new notice provisions will provide better public notice and access to information about specific applications, since the newspaper notice is widely available and persons who are genuinely interested can ask to be included on a mailing list. The commission believes that it is appropriate to continue to use the existing procedures for public notice in Chapter 122 that require newspaper notice for initial issuance. Consistent with this approach for initial issuance, the commission retained the procedures in §122.414(a)(3) and (4) for providing newspaper notice. The continued use of newspaper notice for initial issuance, significant revisions, and reopenings ensures a consistent form of notice for these acid rain procedures.

The commission adopts without changes amended §122.412(1)(B)-(D) concerning acid rain permit application due dates by removing the comma after the term “January 1, 2000.” The purpose of the amendment is to provide consistency with the language in 40 CFR Part 72 and to improve clarity. For example, under §122.412(1)(B), the existing comma may incorrectly imply that the Phase II acid rain permit application submittal date for new units is the latter of “at least 24 months before January 1, 2000” or “before the date when the unit commences operation.” By removing the comma, the

commission clarifies that the submittal date is the latter of “at least 24 months before January 1, 2000” or “at least 24 months before commencing operation.”

The commission also adopts without change revisions to the following subsections and paragraphs of §122.414, concerning Acid Rain Permit Revisions, as the result of revisions to the referenced paragraphs of 40 CFR Part 72. In §122.414(a)(1), the reference to 40 CFR §72.83(b) was changed to 40 CFR §72.83(b)(1) to be consistent with the revised procedural requirements for acid rain permit administrative amendments. Because §72.83(b)(2) and §72.83(c) are incorporated by reference and are not being replaced by procedures in Chapter 122, under the acid rain requirements, the executive director may make administrative revisions to acid rain permits on its own motion, provided the designated representative is notified 30 days before any change is made and is given a copy of the revision after it is made. This revision process allows the executive director, at his discretion, to make administrative revisions to the acid rain permit without receiving an administrative amendment application from the applicant to correct small changes (such as typographical errors) in the acid rain permit. In addition, §122.414(a)(1) maintains the requirement for the executive director to submit the administrative revision to EPA; however, the commission amended §122.414(a)(1) to remove the restriction of “no later than ten days after the final date of final action on the revision” to be consistent with the revised 40 CFR §72.83 for acid rain administrative permit amendments.

In order to be consistent with the provisions of 40 CFR 72 concerning notice for fast-track modifications, the commission revised §122.414(a)(2) to follow the provisions of §72.82 for fast-track modification and to delete the references to minor permit revisions under §122.216 and §122.217.

Although the cross-references to minor permit revisions are deleted, the revised §122.414(2)(A) will require the application content for a fast-track modification to be consistent with what is required for minor permit revisions, except that the modification cannot be operated before the permit is revised; and therefore, provisional terms and conditions do not apply. Further, §122.414(a)(2)(B) sets out the criteria that must be met before the executive director can issue a fast-track modification. This criteria is consistent with the criteria to issue a minor permit revision. It is repeated in §122.414 in order to reduce the number of cross-references in the rule.

Section 72.82 requires designated representatives to send copies of fast-track modifications to the EPA, the permitting authority, and any person entitled to receive written notice under an approved operating permit program. The previous rule required the designated representative to provide copies of the fast-track modification to the executive director, the EPA, and any person entitled to written notice under §72.65(b)(1)(ii), (iii), and (iv). The revisions to Part 72 deleted the reference to §72.65(b)(1) and now require the designated representative to provide notice of fast-track modifications to the EPA, the permitting authority, and to any person entitled to written notice under an approved operating permit program. The adopted rules require the designated representative to provide a copy of the complete application for a fast-track modification to the executive director, the EPA, affected states, and local air pollution control agencies with jurisdiction in the county in which the site is located, which are the

entities entitled to receive written notice under the Texas approved interim program. In addition, the adopted rules require the designated representative to provide a notification of the complete application for a fast-track modification to persons on a mailing list maintained by the chief clerk. The notification provided to persons on a mailing list is consistent with current public notice requirements contained in §122.320 and would identify the public location of and opportunity to review and copy the complete application for a fast-track modification. The commission's chief clerk maintains mailing lists of persons who have indicated an interest in receiving information about specific sites, permitting, or other actions of the commission or about commission actions for sites located in a given county. If a person asks to be added to this mailing list, information on any proposed action to be taken on the particular commission action or on the particular county of interest will be mailed to that person. Upon request, the designated representative will be provided with this list, if any, so that interested persons will be notified of any proposed fast-track modifications.

For fast-track modifications, the commission adopts without change the deletion of provisions requiring the use of public announcement which are currently used for minor permit revisions under Subchapter C of Chapter 122. Section 72.82(a) requires the designated representative to provide notice in a newspaper of general circulation in the area where the source is located within five days of the submission of the application for the fast-track modification. This requirement to use newspaper notice will make the provisions of Chapter 122 for fast-track modifications consistent with Part 72 notice provisions. The rule sets out the specific sections in §122.320, concerning Public Notice, and §122.322, concerning Bilingual Public Notice, that must be used for fast-track modifications. Since

§72.82 does not require hearings or public meetings for fast-track modifications, the references to those requirements in §122.320 and §122.322 were excluded from the final rule. This is consistent with TCAA, §382.056(a) which requires public notice for federal operating permits to be consistent with the requirements of that section and with federal requirements. Since §72.82 does not require hearings or public meetings, the commission does not believe it is appropriate or necessary to add those requirements for fast-track modifications. However, fast-track modifications must comply with the sign posting requirements, and if applicable, with the requirements for bilingual notice. The intent of a fast-track modification is to allow for expeditious changes to acid rain permits for changes that do not have a significant environmental impact. The commission believes that the notice provisions, which include an opportunity for public comment as well as EPA, affected state, and local program review, provide sufficient notice for the public to be able to comment on the proposed fast-track modifications. Section 72.82(b) requires comments to be submitted to the commission as well as to the designated representative. That requirement is included in §122.414(a)(2)(E), except that comments must be submitted to the executive director.

The commission amended §122.414(a)(2)(E) to change the length of time from 30 to 90 days after the close of the public announcement period that the executive director has to approve or disapprove a minor revision for acid rain permits according to the revised requirements of 40 CFR §72.82(d).

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking meets the definition of a “major environmental rule” as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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. The adopted sections are intended to protect the environment or reduce risks to human health from environmental exposure and may have adverse economic effects on affected emission units. Some of the affected emission units could constitute a sector or sectors of the economy. This rulemaking is not subject to any of the regulatory provisions of §2001.0225(c) because the adopted sections do not meet any of the four applicability requirements of §2001.0225(a). The adopted sections do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement, nor are these rules adopted solely under the general powers of the agency. The sections are adopted specifically to comply with federal periodic monitoring requirements, the federal CAM Program, federal acid rain rules, and numerous sections of the TCAA. See the STATUTORY AUTHORITY portion of this preamble.

TAKINGS IMPACT STATEMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The rulemaking revised Chapter 122 to address two federally mandated monitoring programs: compliance assurance

monitoring under 40 CFR Part 64 and periodic monitoring under 40 CFR §70.6(a)(3)(i)(B). The EPA states that “the general purpose of the monitoring required by 40 CFR 64 is to assure compliance with emission standards through requiring monitoring of the operation and maintenance of the control equipment and, if applicable, operating conditions of the pollutant-specific emissions unit” (62 FR 54918). The commission adopts this rulemaking to provide the regulatory structure for implementing CAM through the federal operating permits program and to provide a streamlined implementation approach. The CAM requirements will reside in the new Subchapter H.

The other federal monitoring program addressed by this rulemaking is “periodic monitoring” in 40 CFR §70.6(a)(3)(i)(B). This requirement specifies that where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit must contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of an emission unit’s compliance with the permit. The commission has always had the authority under Chapter 122 to incorporate periodic monitoring requirements into federal operating permits. This rulemaking provides an alternative streamlined approach, similar to that adopted for CAM, to implement periodic monitoring requirements. The requirements for the implementation of periodic monitoring reside in new Subchapter G.

The commission also amended existing sections of Chapter 122 to provide clarity to portions of the rules, to correct outdated statutory references, and to address an administrative error in a previous rulemaking. The commission deleted sections in Subchapter F, specifying that the granting of

authorizations to operate under GOPs, revisions to applications for GOPs, and the renewal of authorization to operate under GOPs are not final actions by the executive director, and therefore, are not subject to judicial review. The commission repealed the specified subsections because they conflict with Texas Health and Safety Code, §382.032, Appeal of Commission Action.

The acid rain requirements of 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76 were incorporated by reference into Subchapter E of Chapter 122 on November 10, 1997. Since then, EPA has revised 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The commission amended §122.410(a), concerning Operating Permit Interface, to incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76. The revised 40 CFR Part 72 authorizes new public notice procedures that will be used at the discretion of the executive director to reduce the time required for and simplify the procedures for initial acid rain permit issuance, significant permit revisions, and reopenings for acid rain permits. The commission adopts amendments which revise the minor permit revision process for acid rain permits by requiring newspaper notice instead of public announcement.

Texas Government Code, §2007.003(b)(4) applies to these amendments, since the action is reasonably taken to fulfill an obligation mandated by federal and state law. These amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, these amendments do not meet the definition of a takings under Texas Government Code, §2007.002(5).

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, 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 applicable CMP goals and policies. The commission has reviewed this rulemaking action for consistency, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rules is 31 TAC §501.12(1). This goal requires the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the adopted rules is 31 TAC §501.14(q), concerning policies for specific activities and coastal natural resource areas. Title 31 TAC §501.14(q) requires commission rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, to comply with the regulations in 40 CFR, adopted pursuant to the Clean Air Act, 42 United States Code, §§7401 et seq., to protect and enhance air quality in the coastal areas so as to protect coastal natural resource areas and promote public health, safety, and welfare. The adopted rules provide a regulatory structure for implementing CAM and also further clarify the commission's authority to require periodic monitoring. CAM and periodic monitoring are federal monitoring programs established under 40 CFR Part 64 and 40 CFR §70.6(a)(3)(B)(i), respectively. The

implementation of the two monitoring programs is consistent with the previously stated goals and policies of the CMP. CAM and periodic monitoring requirements will not authorize the increase in air emissions, nor will they authorize new air emissions. The adopted rules also incorporate the most recently promulgated revisions to 40 CFR Part 72, 40 CFR Part 74, and 40 CFR Part 76, regarding acid rain requirements. Other revisions are necessary to conform to provisions of the TCAA.

PUBLIC HEARING AND COMMENTERS

The commission scheduled a public hearing on the proposed amendments to Chapter 122 on April 13, 2000. No individuals appeared to submit oral testimony at the scheduled time; therefore, the hearing was not convened. However, the commission received written comments from the following during the original public comment period which closed April 13, 2000: Baker Botts L.L.P., on behalf of the Texas Industry Project (TIP), Brown McCarroll & Oaks Hartline, L.L.P. (Brown McCarroll), City Public Service of San Antonio, Texas (CPS), Texas Chemical Council (TCC), TXU Business Services (TXU), and the United States Environmental Protection Agency (EPA).

The commission reopened the comment period on May 19, 2000 to receive written comments on the impact, if any, that the court decision *Appalachian Power Company, et al. v. Environmental Protection Agency* may have had on the proposed amendments to Chapter 122. Notice of extension of the comment period was published in the May 19, 2000 issue of the *Texas Register*. This second comment period closed on May 29, 2000, and the commission did not receive additional comments.

ANALYSIS OF TESTIMONY

Various commenters expressed support for the proposed amendments to Chapter 122. For example, TXU expressed support for the concept of using GOP to phase implementation of CAM and periodic monitoring into federal operating permits. TCC also expressed agreement with the use of a programmatic approach, as well as its appreciation to the commission for its efforts to provide a flexible, streamlined CAM implementation approach. CPS expressed support for the incorporation of periodic monitoring using the minor permit revision process contained in Subchapter C of Chapter 122.

The commission appreciates the support expressed in these comments.

Several comments were received concerning draft CAM GOP #1 and draft periodic monitoring GOP #1 which were offered for public comment concurrently with the public comment period for the amendments to Chapter 122. The final CAM GOP #1 and periodic monitoring GOP #1 are issued in accordance with Chapter 122, Subchapter F, concerning General Operating Permits. Since the commission delegated the authority to issue GOPs to the executive director, the executive director will respond to comments on both GOPs.

Notice of the executive director's final decision will be sent to all persons who commented. The notice will include a response to all comments, and identify any changes to the GOPs and the reasons for the changes. The notice will also describe the public petition process. The executive

director's response to these comments will be published on the commission's publicly accessible electronic media (i.e., Internet home page) after these GOPs become effective.

CPS commented that passive control devices should be allowed to be used in the determination of potential to emit since those devices are excluded from the definition of control device adopted in §122.10. CPS commented that it should be realized that certain emission points may have passive control devices (such as hoods or enclosures) in addition to active control devices (such as fabric filters).

One of the CAM applicability requirements involves a determination of the potential to emit prior to any reductions from the use of a control device. Since an emission unit may use passive control measures prior to the use of a control device, the potential to emit, as limited by the passive control measures, is what will determine CAM applicability. The definition of “Control device” in §122.10(6) is consistent with the definition in 40 CFR Part 64, since it excludes passive control measures from consideration as a control device. Passive control measures may be used in the determination of potential pre-control device emissions.

CPS commented that it would like the incorporation of CAM requirements to coincide with the GOP permit renewal to the extent possible. CPS explained that because of the proposed requirement to incorporate CAM as significant permit revisions, it would like language to be added which would allow permit renewals that are within two years to be allowed to incorporate CAM at the same time in order to avoid expensive public notifications and time periods associated with such revisions.

In response to this comment, the commission emphasizes that Subchapter H provides permit holders the flexibility to choose one of two methods to implement CAM. Permit holders electing to use the CAM GOP implementation mechanism will use the minor permit revision process. The minor permit revision process requires public announcement which is a public notice procedure that the executive director posts on the commission’s publicly accessible electronic media at no cost to the applicant. Permit holders electing to use the CAM case-by-case determination implementation mechanism will use the significant permit revision process. An explanation of the

necessity for a different revision process for each implementation mechanism is contained in the preamble. In addition, the commission believes that the implementation schedule in §122.704 is reasonable for the reasons stated in the preamble. Subsequently, no changes were made to the rule in response to this comment.

TCC submitted comments on the application submittal schedule in §122.604, Periodic Monitoring Application Due Dates, and §122.704, Compliance Assurance Monitoring Application Due Dates. TCC expressed concern that §122.704(1) might require a CAM application within 30 days of the permit anniversary date if that date coincided with issuance of the GOP. TCC recommended that CAM applications be due at permit renewal or 24 months after the issuance date of a CAM GOP containing the emission limitation or standard applicable to an emission unit, whichever is later. TCC commented that this change would provide for consistency, fairness, and simplicity in the application submittal schedule.

As stated previously, the commission believes that the reasons presented in the preamble as justification for §122.704, concerning Compliance Assurance Monitoring Application Due Dates, remain compelling. The adopted application submittal schedule allows permit holders a reasonable amount of time to budget for, purchase, install, and test equipment necessary to comply with CAM requirements. It also allows the executive director time to develop comprehensive monitoring options for inclusion in various CAM and periodic monitoring GOPs. Finally, the adopted submittal schedule provides for the submittal of applications throughout a

calendar year, not all at once. This schedule will allow the executive director to review applications in a more timely fashion than if all applications were due at the same time. By contrast, the commenter's suggestion would result in the submittal of the majority of applications 24 months after the issuance of a CAM or periodic monitoring GOP or at renewal. Consequently, no changes were made to the rule language in response to this comment.

TXU questioned the applicability of CAM to facilities subject to the 20% opacity limit contained in 40 CFR §60.252(c). TXU commented that it is not possible to qualify a facility as having the potential to emit 100 tons of opacity and cited the fact that CAM requirements apply to emission units that have a pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source.

40 CFR §64.2(a)(1) expressly states that CAM applies to emission units subject to an emission limitation or standard for the regulated air pollutant or a surrogate thereof. Opacity is a surrogate of particulate matter. Therefore, an emission unit subject to an opacity standard, such as that contained in 40 CFR §60.252(c), may be subject to CAM provided the remainder of the CAM applicability criteria are satisfied. Consequently, the rule has not been changed in response to this comment.

Brown McCarroll commented that the attempt to address all aspects of case-by-case and GOPs in each section has resulted in a confusing implementation approach to CAM and periodic monitoring. The

commenter stated commented that this is further complicated by the vague nature of the GOP implementation process and the fact that these are permits when they should be permit terms. Brown McCarroll recommended that the rulemaking maintain the federal rule requirements contained in 40 CFR Part 64 with minor adjustments and that the entire concept of streamlined monitoring protocols be addressed as alternatives to the case-by-case review process. By incorporating the federal language, the confusion from reinterpreting the federal requirements and then melding them with a streamlined approval process (the use of the GOPs and enforceable applications) could be avoided. The process can be maintained by allowing a permit holder to reference a list of “executive director approved” monitoring plans and associated draft permit provisions which have been through public notice. Then, the permit holder, using these protocols, could apply for a minor permit revision to incorporate the requirements. Brown McCarroll suggested that this approach would more precisely accomplish the goals of the proposed amendments.

The commission believes that the reasons presented in the preamble as justification for a streamlined CAM implementation approach remain compelling. Furthermore, the commission believes that the approach adopted today conforms to the commenter’s recommendation. In response to the commenter’s concern that the proposed rules confusing, the commission has moved the case-by-case determination out of §122.700. The information is more appropriately identified in other sections of Subchapter H and is now identified in §§122.706, 122.708, and 122.714. The adopted rules necessarily address each implementation method in the context of the existing Chapter 122 framework. Under the adopted rule, owners and operators have the

flexibility to use the CAM GOP implementation approach or the CAM case-by-case implementation approach, which mirrors 40 CFR Part 64.

The commenter recommended that the rulemaking maintain the federal requirements contained in 40 CFR Part 64 and use the concept of “executive director approved” monitoring protocols with a one-time notice process. The TCAA federal operating permit provisions do not authorize the issuance of “executive director approved” monitoring plans with a one-time notice process. The TCAA provides the authority for the commission to issue federal operating permits and GOPs only and not monitoring protocols. A GOP, by its terms and conditions, is intended to be an alternative to case-by-case permitting. Furthermore, it goes through the public notice process when it is first issued, and for certain revisions and renewals. If the CAM and periodic monitoring protocols were used, they would be simply treated as permit terms and conditions because the TCAA does not authorize the issuance of monitoring protocols. In effect, the monitoring protocols would be subject to case-by-case review since they would not be in GOPs. For these reasons, the commission did not change the rule in response to this comment.

Brown McCarroll, TCC, and TIP expressed concern that the proposed amendments to Chapter 122 make GOP applications enforceable. Brown McCarroll indicated that owners and operators would be penalized for the innocent submission of erroneous information. Under federal rules, CAM submittals are not subject to enforcement action; submittals are merely proposals for approval. Once approved, they become permit conditions which are enforceable. TCC objected to enforceable permit applications

since, upon approval, the monitoring requirements become permit terms. Owners and operators, and the executive director, would be required to track the most minute detail contained in an application.

TCC added that different levels of detail may be provided in CAM plans and some owners or operators may provide minimal detail to avoid enforcement. TCC recommended that each plan be reviewed on its own merits, but that the commission reduce the plans to specific enforceable permit terms. In addition, Brown McCarroll maintained that enforceable CAM GOP applications are beyond state law and 40 CFR Part 64. TIP expressed concern that the definition would lead to confusion and inconsistency with regard to what elements of a CAM application are enforceable. The CAM GOP itself should contain the necessary level of detail for enforceability without the need to incorporate the details of the application. While the procedures for promulgating CAM requirements will follow the GOP procedures, the CAM GOP should not be treated in all respects as an operating permit. The CAM GOP will not authorize the operation of an emission unit, but rather will constitute an applicable requirement. TIP noted that EPA has discouraged the incorporation of applications into operating permits in its July 1995, White Paper. TIP requested that the commission not adopt a definition for “enforceable GOP application,” but instead amend §122.140(2).

The commission has changed the rules in response to these comments. The adopted rules do not contain a definition for the term “Enforceable GOP application,” and all references to this term have been deleted from the adopted rules. The purpose of the term was to assign a name to those representations in a permit application that become conditions under which a permit holder shall operate. Those representations are expressly identified in §122.140 and would have been given the

name of enforceable GOP application. The commission believed that the proposed term would clarify the rules and make some aspects of new Subchapters G and H more understandable. Based on comments received by the commission, the term did not serve its purpose and is being removed from the rules. Subsequent definitions in §122.10 have been renumbered. The comments also indicate that clarification is warranted regarding which representations in a CAM GOP or periodic monitoring GOP application become conditions under which a permit holder shall operate. Therefore, the commission has amended §122.140 and §122.502 to indicate that upon the granting of an authorization to operate under a CAM GOP or periodic monitoring GOP, representations in a permit application required by §122.714(a) and §122.612, but excluding the justification for those representations, are conditions under which a permit holder shall operate.

Brown McCarroll and TCC commented that proposed §122.712(a)(6)(A) is not consistent with 40 CFR Part 64. They commented that proposed §122.712(a)(6)(A) require a permit holder to apply for a revision to CAM requirements if the permit holder identified a failure to achieve compliance with an emission limitation or standard for which the approved monitoring did not indicate a deviation while providing valid data; however, Part 64 requires a permit modification only if “necessary.” TCC noted that the federal requirements in 40 CFR §64.7(e) only mandate notification to the permitting authority of these situations. TCC recommended that the commission adopt the federal language in order to avoid permit revisions that may be unnecessary.

In response to these comments, the commission has amended §122.712(a)(6) to indicate that a permit holder shall, if necessary, apply for a revision to CAM requirements or for a new permit, when appropriate, if §122.712(a)(6)(A) or (B) are satisfied. The commission agrees with the commenter that a notification period is required by §64.7(e) and is appropriate for these types of occurrences. Thus, the commission amended §122.712(a)(6) to incorporate the notification requirements of §64.7(e). The inclusion of a 30-day notification period will provide permit holders a reasonable amount of time to submit the notifications after the data has been assessed.

TCC recommended that the term “CAM GOP” be deleted from §122.10 and replaced with the term “General CAM Operating Provisions.” TCC commented that a permit authorizes operation of an emission unit and that a CAM GOP does not serve this function because CAM is an applicable requirement of Part 70. In addition, TCC commented that characterization of the CAM monitoring options as a CAM GOP creates confusion in Chapter 122 since it would be unclear whether the phrase “GOP” referred to a traditional GOP or a CAM GOP. Finally, TCC commented that the word “permit” is not necessary to establish enforceability. The commission has the authority to specify CAM or periodic monitoring provisions in a standalone document which is neither part of a permit or rule.

As stated in the preamble, the commission has elected to use a programmatic approach for the implementation of CAM. The most efficient method for implementation of this approach is to use GOPs, since Chapter 122 contains a framework for the issuance, revision, renewal, and rescission of GOPs. The commenter recommended the use of “General CAM Operating Provisions.” The

TCAA federal operating permit provisions do not authorize the issuance of General CAM Operating Provisions. As discussed previously, the TCAA provides the authority for the commission to issue federal operating permits and GOPs only. If the CAM and periodic monitoring operating provisions were used, they would be simply treated as permit terms and conditions, because the TCAA does not authorize the issuance of general operating provisions. In effect, the operating provisions would be subject to case-by-case review since they would not be in GOPs. For these reasons, the commission did not change the rule in response to this comment. The commission does not agree with the commenter's assessment that a CAM GOP does not authorize operation of an emission unit.

Since CAM is an applicable requirement of Part 70, failure to comply with that requirement could result in enforcement. In that regard, a CAM GOP through the permit for the site or the authorization to operate does authorize operation of an emission unit for an applicable requirement.

The commission agrees that some confusion may have been caused by using the GOP process to implement CAM. As defined in §122.10, a permit includes CAM GOPs. However, in some sections of Chapter 122, the word permit is used in such a way that it does not refer to CAM GOPs. Therefore, the commission has amended the definition of "Permit" contained in §122.10 to state that the term "permit" when used in Chapter 122 refers to a CAM GOP or periodic monitoring GOP only when clearly indicated by the context.

The commission agrees that a GOP is not necessary to establish the enforceability of CAM provisions, since CAM can be implemented on a case-by-case basis. However, consistent with the programmatic approach, it is necessary to implement the CAM requirements through GOPs. The commission reiterates that the programmatic approach provides permit holders the flexibility to use a case-by-case determination to implement CAM requirements. Consequently, the commission has not changed the rule in response to this comment.

TCC requested confirmation that the following is an accurate statement of the relationship between a CAM GOP and a federal operating permit: A CAM plan is a standalone document which is referenced in the Title V permit. Any revisions to the CAM plan do not necessarily impact the Title V permit. However, in certain cases, revisions to the Title V permit may result in necessary changes to CAM plans. TCC also commented that §122.217(b) should clarify that owners and operators are not required to revise a federal operating permit because of revisions to a CAM GOP unless the revisions to the CAM GOP affect the applicability of that CAM GOP to an emission unit. TCC's support for this request is the fact that enforceability of a CAM GOP is established through the CAM GOP.

The commission interprets the commenter's reference to "CAM plan" to mean "CAM GOP."

The commission agrees with the commenter that revisions to CAM GOPs do not in all cases result in revisions to a federal operating permit. It is also true that some revisions to a federal operating permit may result in changes to CAM requirements. Therefore, the commission added the phrase "as appropriate" to §122.217(b) to further clarify this issue.

Although changes to a CAM GOP may not affect the applicability of that GOP to an emission unit, it could affect, for example, the deviation limit established for that emission unit. There may be changes to a CAM GOP which result in other changes to the federal operating permit. The commission made no changes to the rule in response to this comment.

TCC requested that the commission clarify the terms “Deviation” and “Deviation limit” because they are too broad as defined. TCC recommended that the term “Deviation limit” be deleted from §122.10 and replaced with the term “Deviation indicator bounds” because a limit implies a standard which must not be exceeded. TCC commented that a deviation limit is a gauge of performance within a certain range of conditions which may or may not indicate noncompliance and, therefore, the term “Deviation indicator bounds” may be more appropriate. As an alternative, TCC recommended the use of the terms “Excursion” and “Indicator range” which are contained in 40 CFR Part 64.

A deviation is any indication of noncompliance with a term or condition of the permit, as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit. As explained previously, the commission elected not to use the Part 64 terms “Excursion” and “Exceedence” because the Chapter 122 term “Deviation” encompasses both Part 64 terms. A “Deviation” is an indication of noncompliance, and not necessarily a violation. In addition, since “Deviation” is defined as an *indication* of noncompliance with a permit term or condition, the commission chose not to use a term such as “deviation indicator bounds” or “indicator range” because of the circular nature created by these terms and

the definition of deviation limit. The term “Deviation limit” sets the boundary for an indicator of performance; operation beyond that boundary is a deviation. The rule has not been changed in response to this comment.

In addition, the definition of “Deviation” was proposed to be revised to include a reference to “enforceable GOP applications.” Since the term “Enforceable GOP application” has been deleted from the rule and the CAM GOPs are considered permits, the term “deviation” has not been amended.

TCC requested confirmation that the following is an accurate statement: An indicator range or a deviation indicator bounds is set on the monitoring equipment itself (monitoring range, manufacturing specifications, and the like) or on specific process parameters (temperature, pressure, and the like) or on specific work practices which provide an indication of performance. Such details are established in the CAM GOP and referenced in the Title V permit. The indicator range depends upon the monitoring mechanism.

For the reasons previously stated, Chapter 122 contains the term “Deviation limit.” Thus, in responding to this comment, the commission substituted the term “Deviation limit” for the terms “Indicator range” and “Deviation indicator bounds.” Generally, the commission agrees with the commenter’s statement about the relationship between a deviation limit and a monitoring plan. The deviation limit is set on the indicator of performance for the emission unit or control device. Indicators of performance can be process parameters, work practices, or direct measurements of emissions. Deviation limits are designated values or conditions which establish the boundary for the indicator of performance. Deviation limit examples include the following: minimum temperature, minimum pressure drop, no visible emissions, an open valve, or the results of an inspection maintenance program. The commission also agrees that the indicator range depends upon the monitoring mechanism.

TCC recommended deleting the phrase “including appurtenances” from the definition of emission unit as proposed in §122.10. TCC commented that all appurtenances of emission units are not necessarily

an emission unit or part of an emission unit. TCC cited a walkway or platform on a stack as an example of an appurtenance that is not an emission unit or part of an emission unit. TCC believes the amendment unnecessarily broadens the definition of emission unit.

As stated in the preamble, the commission revised this term to be more consistent with the term “Dacility” in the TCAA and the definition of “Emissions unit” in 40 CFR 70. The amendment should clarify that some appurtenances, such as a control device, may be subject to an applicable requirement that must be codified in a federal operating permit. The commission notes, however, that some appurtenances, such as a platform, should not be identified in a federal operating permit to the extent they are not subject to an applicable requirement. In such a case, a permit revision would not be necessary if an owner or operator elected to remove the platform, for example. Consequently, the rule has not been changed in response to this comment.

TIP and TCC recommended that the definition of “Predictive emission monitoring system (PEMS)” proposed in §122.10 be clearly distinguished from the term as used in 30 TAC Chapter 117 to prevent confusion between the two terms. In addition, TCC objected to the use of the phrase “emission limitation or standard” which is contained in the proposed definition. TCC proposed the following definition of PEMS: a system that uses process or other parameters to predict compliance in terms of applicable emission values. They also gave the example of a cap and trade program, where NO_x emissions from a source might be calculated via a PEMS. However, the NO_x calculated from any individual source, in this example, would not be the “limit” or “standard” for the facility. Also, the

simple reduction or manipulation of data place it into the same terms of the standard is not necessarily part of the PEMS.

The definition of PEMS in Chapter 122 mirrors the Part 64 definition of PEMS and states that this definition of PEMS only applies to Subchapter H CAM requirements. The preamble to 40 CFR 64 states that the definition was added to 40 CFR 64 because 40 CFR §64.3 sets forth special criteria for the use of PEMS when employed to fulfill 40 CFR 64 requirements (62 FR 54911). For similar reasons, the definition was added to Chapter 122 because §122.706(d) and §122.714(c) reference PEMS.

With respect to the alternative definition proposed by TCC, the commission believes that the term “Emission limitation or standard” is appropriate and consistent with 40 CFR 64. The commission interpreted the term “source” in the commenter’s example of a cap and trade program to mean a site with individual emission units where the site has an overall cap and there are no separate cap limitations for each emission unit. In this example, the PEMS readings for each individual emission unit, based on the Chapter 122 definition of PEMS, would not be considered a standard. The definition in Chapter 122 states that the monitoring system will produce values in “terms” of the applicable emission limitation or standard, which means that compliance with the emission limitation or standard is still based on the structure of the underlying applicable requirement. The commission did not make changes to the rule language in response to this comment.

TIP recommended that the definition of “Control device” proposed in §122.10 be clearly distinguished from the term as used in 30 TAC §101.1.

In response to this comment, the commission has amended §122.702(a) to state that the term “Control device,” as used in Subchapter H, shall have the meaning defined in §122.10(6). This change should clarify that the term “Control device” defined in §122.10(6) applies exclusively to the CAM requirements in Subchapter H.

TCC supported the proposed amendment to §122.130(a)(1), which changes the phrase “owner and operator” to “owner or operator.” TCC commented that it appreciates the commission’s recognition that the changing face of business has led to contractual relationships that provide for differing ownership but operations under common control.

The commission appreciates the support expressed in these comments.

TCC recommended revising §122.142 to clarify that it only applies to the Title V Operating Permit and not to CAM GOPs or periodic monitoring GOPs. TCC commented that this further illustrates the confusion caused by naming CAM plans “General Operating Permits.”

In response to this comment, the commission has amended §122.10(17) to state that the term “Permit” refers to a CAM GOP or periodic monitoring GOP only when clearly indicated by the

context. For example, this change clarifies that §122.142(c) does not apply to CAM GOPs. As discussed previously, the commission has elected to use a programmatic approach for the implementation of CAM. The most efficient method for implementation of this approach is to use GOPs, since Chapter 122 contains a framework for the issuance, revision, renewal, and rescission of GOPs.

TCC commented that the phrase “separate authority,” contained in amended §122.161(d), is unclear.

TCC commented that the interprets separate authority to mean any authority other than authority granted under the Clean Air Act, for example, Resource Conservation and Recovery Act, or Clean Water Act.

TCC believes that the intent of Subchapter G or H is to justify the approval of monitoring under all Clean Air Act requirements, whether promulgated by TNRCC, EPA, or other air pollution jurisdiction.

In response to this comment, the commission has amended §122.161(d) to clarify that “separate authority” is the TCAA, FCAA, or an air pollution control agency having jurisdiction.

TCC requested that the commission clarify that the term “Permit holder” in §122.210(b) refers to the Texas Natural Resource Conservation Commission. TCC noted that this furthers its concern that the use of the term “CAM or periodic monitoring GOP” is easily confused with the Title V Operating Permit because the term “Permit” is loosely used in the rulemaking.

“Permit holder” is defined in §122.10(20) as a person who has been issued a permit or granted the authority by the executive director to operate under a GOP. Thus, the term “Permit holder” in §122.210 refers to an owner or operator of a site that was initially issued a site-wide operating permit, as opposed to granted the authority to operate under a traditional GOP. Section 122.210 identifies the cases when a permit holder would need to revise their permit as the result of a change at a site, adoption or promulgation of a rule, or a change in the CAM or periodic monitoring GOP. The procedures that the executive director would use to revise the CAM GOP or periodic monitoring GOP are found in Subchapter F. The rule was not changed in response to this comment.

TCC requested that §122.213(d) be amended by replacing the word “shall” with the word “may,” stating that there should be no need to submit an application for a permit revision if there are no administrative changes.

If a change occurs that triggers the applicability provisions for an administrative permit revision under §122.211, then under the provisions of §122.213 the permit holder is required to submit an application for a permit revision. Until this occurs, permit holders are not required to submit applications. The rule has not been changed in response to this comment.

TCC recommended that the commission amend §122.322 to indicate that for revisions to General CAM/PM Operating Provisions which are deemed minor and satisfy necessary protocols, the executive director can approve as a case-by-case revision without further public notice.

As previously discussed, Chapter 122 contains the term “CAM GOP.” Thus, in responding to this comment, the commission substituted the term “CAM GOP” for the term “General CAM/PM Operating Provisions.” TCC referred to §122.322, concerning Bilingual Public Notice; however, representatives of TCC clarified that they intended to suggest a process that would allow a permit holder to propose minor revisions to the CAM provisions that are similar to the one contained in a GOP without additional public notice. Revisions to case-by-case determinations are governed by Subchapter C, which includes public announcement for minor revisions which the executive director posts on the commission’s publicly accessible electronic media. Although revisions to CAM GOPs may be minor, a similar revision to a case-by-case determination may raise issues unique to circumstances at the site. As a result, the commission believes that the public announcement procedure for minor revisions is still appropriate for these changes. In addition, it would be extremely difficult for the executive director to determine which types of changes to CAM GOPs would require a corresponding public announcement for case-by-case determinations and which changes would not. The rule has not been revised in response to this comment.

TCC supported the proposed amendment to §122.350, concerning EPA Review, which allows the EPA review period and the public comment period to run concurrently. However, TCC recommended that the commission amend §122.350 by replacing the phrase “no earlier” with the phrase “no later.”

The commission proposed amending §122.350 so that the commission will be able to establish a GOP more quickly to fulfill the 40 CFR 70 requirements. The amendment to §122.350 accomplishes this goal. In order to maintain consistency with §122.350(b)(2), the commission has not revised the rule in response to this comment.

TCC recommended that the commission amend the heading for §122.501 from “General Operating Permits” to “Title V General Operating Permits.”

Section 122.501 governs all general operating permits, including CAM GOPs and periodic monitoring GOPs. The heading “Title V General Operating Permits” would imply that only traditional GOPs (e.g., Oil & Gas, Bulk Fuel Terminal, etc.) are covered in this section. The rule has not been changed in response to this comment.

TCC recommended amending the introductory sentence in §122.501(d), concerning General Operating Permits, by adding the phrase “as follows” after the phrase “by the executive director.”

Because the commission did not propose amendments to the introductory sentence in §122.501(d), the commission is unable to make the suggested revision. Therefore, the commission did not make any changes to the rule in response to this comment.

TCC recommended that the commission amend proposed §122.501(g) to indicate that notice as required by §122.506 will be provided for any proposed permit combination.

The requirements of §122.506 concern notice for issuance, significant revision of, and rescissions of GOPs. Section 122.506 requires notice in newspapers, the *Texas Register*, and on the commission's publically accessible electronic media. Since the combination of GOPs is not a substantive change, the commission believes that a notice in the *Texas Register* and on the commission's publicly accessible electronic media is sufficient. Therefore, §122.501(g) was amended and §122.506(i) added to state that notice will be published in the *Texas Register* and posted on the commission's publicly accessible electronic media when the executive director combines two or more GOPs.

TCC commented that it believes §122.504, concerning Application Revisions When a General Operating Permit is Revised or Rescinded, applies to traditional GOPs and is not applicable to CAM GOPs.

Section 122.504 applies to all application revisions when a GOP is revised or rescinded. This includes revisions to CAM GOPs. As stated previously, some revisions to CAM GOPs may not require a revision to the GOP application. Rule language was added to this section to clarify that changes to CAM GOPs may result in revisions to the GOP application.

With regard to §122.502, TCC reiterated its objection to provisions in the proposed rule that would make the representations in an application for a monitoring GOP enforceable. TCC commented that the characterization of monitoring requirements as permits rather than permit terms is beyond 40 CFR 64 and that the permitting authority must either approve a CAM plan, reject it, or approve it with conditions. Enforcement of the plan itself will lead to unequal treatment and a reluctance to submit detailed plans.

As previously discussed, §122.140 has been amended to identify those portions of the CAM and periodic monitoring requirements that become conditions under which a permit holder shall operate. The framework for implementing the programmatic approach exists for GOPs under Chapter 122 and not permit terms or general operating provisions. Finally, the executive director will review the CAM applications or plans and identify the appropriate permit terms and conditions. Therefore, only certain portions of CAM applications are enforceable.

TCC recommended that the commission delete from §122.504(a) the phrase “promulgation or adoption,” as proposed, because this phrase is inconsistent with the purpose of the section, which is permit revisions.

Section 122.504 contains the procedures for revising GOP applications to address rule changes (i.e., the promulgation or adoption of an applicable requirement or state only requirement).

Therefore, the phrase “promulgation or adoption” is appropriate for this section, and the rule has not been changed in response to this comment.

TCC recommended that the commission correct a typographical error appearing in §122.506(a). The word “recission” should be spelled “rescission.”

The commission appreciates the comment and has corrected the misspelling.

TCC commented that new source review (NSR) permits might serve as templates for the identification of monitoring options that might appear in CAM GOPs. This would be similar to using maximum available control requirements (MACT) requirements as a template for General CAM Operating Provisions even if the source is not subject to the particular MACT standard. TCC suggested that §122.602(3) be clarified as requested in its comments on CAM applicability and §122.702(c)(6).

During the development process for CAM GOPs and periodic monitoring GOPs, the executive director will review typical NSR permit provisions to identify monitoring options that are suitable for the CAM GOP. For example, the executive director reviewed several NSR permits and guidance documents in the development of CAM GOP #1 and periodic monitoring GOP #1 which were proposed concurrently with the proposal of this rulemaking. This review process will continue during the development of future CAM GOPs and periodic monitoring GOPs. The rule has not been revised in response to this comment.

TCC recommended that the commission amend proposed §122.602 and §122.702(c) to indicate that all requirements exempt from Subchapter H satisfy Subchapter G, since any monitoring which satisfies CAM also satisfies period monitoring.

Adopted §122.600(c) contains a statement that compliance with Subchapter H satisfies Subchapter G. The rule language was not changed in response to these comments since §122.600(c) covers this issue.

TCC recommended that the commission clearly differentiate between the CAM and periodic monitoring GOP application due dates contained in proposed §122.604 and §122.704 and the actual dates for compliance with those plans.

In response to this comment, the commission added subsection (a)(2) to §122.714 and subsection (b)(2) to §122.612, which states that unless otherwise approved by the executive director, the permit holder shall conduct the monitoring required upon revision or renewal of the permit or the granting of the authorization to operate that includes these requirements. These additions should clarify when compliance with CAM requirements must begin. Sections 122.704 and 122.604 exclusively contain the schedule for when a CAM application is due to the executive director.

TCC commented that if the commission revises a CAM GOP, a permit holder should have at least 180 days to implement the change, seek case-by-case monitoring provisions, or request additional changes.

If the CAM GOP or periodic monitoring GOP is revised, the executive director will be sensitive to the need for reasonable compliance dates. In some cases, a change could require longer than 180 days to implement or in other cases less than 180 days. An applicable requirement may also have a compliance date which is independent of a CAM or periodic monitoring compliance date. Since there is a need to remain flexible with regard to compliance dates, the rules have not been revised in response to this comment.

TCC requested clarification of the intent of proposed §122.608(e) and §122.708(d). As written, §122.608(e) seems to imply that any operational change which is implemented at a site with a minor or administrative revision would require a revision to underlying monitoring requirements prior to authorization to operate. TCC also recommended that the commission amend §122.608(e) and

§122.708(d) to allow for the operation of changes to deviation limits before the federal operating permit is revised if the deviation limit results in a more strict monitoring.

The purpose of §122.608(e) and §122.708(d) is to make clear that once CAM requirements have been incorporated into a permit, or the application if a site is operating under a traditional GOP, revisions to those requirements will be governed by Subchapter C and Subchapter F, respectively. Changes not involving CAM requirements will go through the normal revision tracks in Subchapters C and F; those changes for minor and administrative revisions can be made without prior approval. Changes to these CAM requirements will require revision of the permit, as appropriate, and each of these subchapters already contains the framework appropriate for addressing revisions.

Deviation limits are a critical component of the approach in Subchapter H and over which an owner or operator may have significant discretion. The commission believes that it would be difficult to predetermine criteria for the establishment of deviation limits that may result in more stringent monitoring. However, the commission did amend the rules to expand the cases for deviation limit changes that do not require prior approval. In the proposal, only deviation limit changes that were not a result of a change in an emission limitation or standard could be done without prior approval. Therefore, §122.608(e) and §122.708(d) allow deviation limit changes to occur without prior approval as needed to respond to the promulgation or adoption of an applicable requirement.

TCC recommended that the commission revise §122.706(d) to indicate that the use of CEMS satisfies the requirements “for that standard for that pollutant” versus “for this subchapter.”

As required by 40 CFR §64.3(d)(1), §122.706(a)(4) (originally proposed as §122.706(d)) specifies that owners or operators of emission units subject to applicable requirements that require CEMS, PEMS must submit a CAM GOP monitoring option that includes the use of the CEMS, COMS, or PEMS to satisfy CAM requirements for the other emission limitations or standards that are subject to CAM for that particular emission unit. The commenter’s suggested language would narrow this requirement to only require the use of CEMS, PEMS, or COMS to satisfy CAM for those standards that already require their use. In order to remain consistent with Part 64, no changes were made to the rule in response to this comment.

TCC recommended that the commission correct a typographical error appearing in proposed §122.708(c). The phrase “of this title” which appears after the second parenthetical phrase should be deleted.

The commission appreciates the comment and has corrected the error.

TCC recommended that the commission delete the phrase “summary information on the number” from proposed §122.712(a)(3)(B), because there is no reason to sum the number of incidents. A listing of

monitoring downtime incidents should be sufficient without a requirement for additional data fields to “count” events.

The commission has deleted the requirement to keep records of summary information on the number of monitoring downtime incidents. The commission agrees with the commenter that the listing of monitoring downtime incidents including the beginning date and time, ending date and time, and cause (including unknown cause, if applicable) for monitoring downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable) is sufficient.

TCC recommended that the commission delete §122.712(a)(5)(B) because a planned or excused start-up and shut-down should not be considered a deviation.

40 CFR §64.7(d) requires certain actions of owners or operators upon detection of an excursion or exceedance. As explained previously, the commission considers excursions and exceedance to be deviations. The commission believes that 40 CFR §64.7(d)(1) contemplates the reporting of events during startup or shutdown to be in the category of deviation. The commission has defined deviation as any indication that a permit term or condition may not have been met, not necessarily that a violation has occurred. In order to be consistent with Part 64, the commission did not revise the rule in response to this comment.

TCC commented that it objected to a statement contained in the preamble which indicates that an inaccurate deviation limit established based on erroneous information in the justification would result in an enforcement action (25 TexReg 1988). In addition, CAM plans (or “applications” as the term is used in the proposal) should not be enforceable documents. TCC objected to this characterization, because there may be many instances where a permit holder submits a justification using information that is

normally reliable, but later is found to be erroneous. In the event that false information was knowingly submitted to the commission, there is adequate enforcement authority under the Texas Clean Air Act to appropriately penalize a permit holder. Furthermore, the commission has already stated that the justification is not a necessary permit term, and if the commission disagrees with a justification, either during its review or at some time after the plan is approved, it may either disapprove the plan or rescind the permit and require the permit holder to submit a permit revision.

In the preamble, the commission clarified that the justification for the deviation limit will not be included in the permit or be considered representations in GOP applications under which the owner or operator must operate. The justification is instead supporting information for the deviation limit and not conditions under which the owner or operator must operate. Therefore, once the deviation limit is approved, inclusion of the justification in the permit is unnecessary.

The commission also clarified that if after permit issuance, the deviation limit appears to have been based on erroneous information in the justification and the deviation limit is incorrect, a permit holder may be subject to enforcement action because the deviation limit does not provide a reasonable assurance of compliance and provide for operation and maintenance of the control device. The enforcement action would not be based on the erroneous justification. Although the justification for those values are not conditions under which the permit holder must operate, the commission wanted to clarify the importance of developing deviation limits based on sound and reliable information. No changes were made to the rules in response to this comment.

TIP recommended that the commission defer adoption of the current rulemaking pending a thorough evaluation of the *Appalachian Power* decision. TIP commented that the commission's proposed rulemaking is directly governed by *Appalachian Power*, since the commission's current rulemaking follows the overturned approach, which required the states to evaluate applicable requirements for the sufficiency of their periodic monitoring, and to add monitoring requirements where the rules are judged deficient in that area. TIP further commented that by establishing a GOP designed to add periodic monitoring requirements to Title V applicable requirements, the rule must take account of the court's mandate.

On April 14, 2000, the United States Court of Appeals for the District of Columbia Circuit decided *Appalachian Power Company, et al., v. Environmental Protection Agency*. *Appalachian Power* set aside, in its entirety, EPA's "Periodic Monitoring Guidance for Title V Operating Permits Programs," released in September 1998. The court stated that "state permitting authorities may not, on the basis of EPA's Guidance or 40 CFR §70.6(a)(3)(i)(B), require in permits that the regulated source conduct more frequent monitoring of its emissions than that provided in the applicable State or federal standard, unless that standard requires no periodic testing, specifies no frequency, or requires only a one-time test."

In response to TIP's comment, the commission extended the public comment period on this rulemaking ten days to receive comments on the impact, if any, of the *Appalachian Power* decision on the proposed revisions to Chapter 122. Notice of the extension was published in the May 19,

2000 issue of the *Texas Register*; the comment extension period ran from May 19 to May 29, 2000.

The commission received no comments during the extension period.

The commission has reviewed *Appalachian Power* and determined that it does not impact this rulemaking for the following reasons. First, the commission has not and did not use EPA's periodic monitoring guidance document in the manner prohibited by the court, that is, the commission has not and did not use the periodic monitoring guidance document to require in permits that a regulated source conduct more frequent monitoring of its emissions than that provided in an applicable State or federal standard. Second, this rulemaking codifies the legitimate purpose of 40 CFR §70.6(a)(3)(i)(B) expounded by the court, that is, it creates a framework for the implementation of periodic monitoring for standards that require no periodic testing, specify no frequency, or require only a one-time test. The commission notes that periodic monitoring GOP #1, offered by the executive director for comment concurrently with this rulemaking, provides periodic monitoring options for standards that require only a one-time test. Thus, neither Subchapter G nor periodic monitoring GOP #1 exceed the court's holding. Since no comments were received concerning any adverse impacts of *Appalachian Power*, and since the commission believes both Subchapter G and periodic monitoring GOP #1 are in accord with *Appalachian Power*, the commission has chosen not to defer adoption of the rule or the GOP.

EPA commented that should the commission rely on the permit applications as enforceable documents, the EPA regional office should have "real time" access to the applications. The Air/Toxics Inspection

and Coordination Branch is responsible for conducting facility air inspections. Preinspection procedures include the review of permits and other related documents. Along with the Title V permit, the permit application is reviewed prior to the inspection. Therefore, the commission should provide “real time” access to GOP applications and other information which identifies the emission unit and the monitoring requirements. EPA would like to work with the commission by having access to specific information by way of the commission’s information management system.

The commission will work with EPA to provide up-to-date application information in a reasonable time frame.

EPA requested that the commission complete a checklist for the CAM-related amendments to Chapter 122 to demonstrate that these changes satisfy the provisions of 40 CFR Part 64.

The referenced checklist appears to be a useful tool for the EPA to verify that amendments to Chapter 122 meet the requirements of 40 CFR Part 64. The commission believes this request to complete the checklist is a request for information and not a specific comment on the revisions to Chapter 122. Even though the commission has not responded to this request for information as part of this analysis of testimony, the commission will work with the EPA to address any specific concerns regarding the revisions to Chapter 122 as a part of the program approval process.

CPS commented that applicants should be allowed more than five days, as proposed in §122.414, to post signs and notices after the submission of an acid rain application for a fast-track modification.

Section 122.414(a)(2)(E) requires that within five days of the submission to the executive director of an application for a fast-track modification, the designated representative shall comply with the public notice requirements in §122.320(b) - (m), concerning Public Notice, and §122.322, concerning Bilingual Public Notice. These sections require the posting of signs and the publication of newspaper notices. Section 122.414(a)(2)(E) mirrors revised 40 CFR §72.82(a). Also, as discussed in the preamble, the adopted amendments to §122.414 will make the Chapter 122 fast-track modification provisions consistent with 40 CFR Part 72 notice provisions. This is consistent with TCAA, §382.056(a), which requires public notice for federal operating permits to be consistent with the requirements of that section and with federal requirements. Therefore, the rule has not been changed in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide authority for the commission to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), 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; §5.122, which provides delegation of uncontested matters to the executive director; §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.

SUBCHAPTER A : DEFINITIONS

§122.10

§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) **Air pollutant** - Any of the following regulated air pollutants:

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a National Ambient Air Quality Standard (NAAQS)

has been promulgated;

(D) any pollutant that is subject to any standard promulgated under FCAA, §111 (Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the EPA by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (Stratospheric Ozone Protection); or

(F) any pollutant subject to a standard promulgated under FCAA, §112 (Hazardous Air Pollutants) or other requirements established under §112, including §112(g) and (j). However, a pollutant shall not be considered an air pollutant under this chapter solely because it is subject to standards or requirements under §112(r).

(2) Applicable requirement -

(A) All of the requirements of Chapter 111 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter) as they apply to the emission units at a site.

(B) All of the requirements of Chapter 112 of this title (relating to Sulfur Compounds) as they apply to the emission units at a site.

(C) All of the requirements of Chapter 113 of this title (relating to Control of Air Pollution from Toxic Materials), as they apply to the emission units at a site.

(D) All of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site.

(E) All of the requirements of Chapter 117 of this title (relating to Control of Air Pollution From Nitrogen Compounds) as they apply to the emission units at a site.

(F) All of the requirements of Chapter 119 of this title (relating to Control of Air Pollution from Carbon Monoxide) as they apply to the emission units at a site.

(G) Any site specific requirement of the state implementation plan (SIP).

(H) Any term or condition of any preconstruction permits issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) as necessary to implement the requirements of regulations approved or promulgated through rulemaking under FCAA, Title I, Parts C or D (relating to Prevention of Significant Deterioration of Air Quality or Plan Requirements for Nonattainment Areas).

(I) All of the following federal requirements as they apply to the emission units at a site:

(i) any standard or other requirement under FCAA, §111 (standards of Performance for New Stationary Sources);

(ii) any standard or other requirement under FCAA, §112 (Hazardous Air Pollutants);

(iii) any standard or other requirement of the Acid Rain Program;

(iv) any requirements established under FCAA, §504(b) or §114(a)(3) (Monitoring and Analysis or Inspections, Monitoring, and Entry);

(v) any standard or other requirement governing solid waste incineration under FCAA, §129 (Solid Waste Combustion);

(vi) any standard or other requirement for consumer and commercial products under FCAA, §183(e) (Federal Ozone Measures);

(vii) any standard or other requirement under FCAA, §183(f) (Tank Vessel Standards);

(viii) Any standard or other requirement under FCAA, §328 (air Pollution from Outer Continental Shelf Activities);

(ix) any standard or other requirement under FCAA, Title VI (Stratospheric ozone Protection), unless EPA has determined that the requirement need not be contained in a permit; and

(x) any increment or visibility requirement under FCAA, Title I, part C or any NAAQS, but only as it would apply to temporary sources permitted under FCAA, §504(e) (Temporary Sources).

(J) The following are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph:

(i) any state or federal ambient air quality standard;

(ii) any net ground level concentration limit;

(iii) any ambient atmospheric concentration limit;

(iv) any requirement for mobile sources;

(v) any asbestos demolition or renovation requirement under 40 Code of Federal Regulations (CFR) Part 61, Subpart M (National Emissions Standards for Asbestos);

(vi) any requirement under 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(vii) any state only requirement (including §111.131 of this title (relating to Definitions), §111.133 of this title (relating to Testing Requirements), §111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), §111.137 of this title (relating to Control Requirements for Surface Coatings containing less than 1.0% Lead), and §111.139 of this title (relating to Exemptions)).

(K) Any requirements noted in this definition which have been promulgated by the EPA, but have not been adopted by and delegated to the commission are federally enforceable only. These applicable requirements will be designated as federally enforceable only in the permit.

(3) **Compliance assurance monitoring (CAM) case-by-case determination - A**

monitoring plan designed by the permit holder and approved by the executive director to satisfy 40 CFR Part 64 (Compliance Assurance Monitoring).

(4) **Compliance assurance monitoring general operating permit (CAM GOP) - A**

GOP issued under Subchapter F of this chapter (relating to General Operating Permits) which provides monitoring options established by the executive director to satisfy Subchapter H of this chapter (relating to Compliance Assurance Monitoring).

(5) **Continuous compliance determination method** - For purposes of Subchapter H of

this chapter and Subchapter G of this chapter (relating to Periodic Monitoring), a method, specified by an applicable requirement, which satisfies the following criteria:

(A) the method is used to determine compliance with an emission limitation or standard on a continuous basis consistent with the averaging period established for the emission limitation or standard; and

(B) the method provides data either in units of the emission limitation or standard or correlated directly with the emission limitation or standard.

(6) **Control device** - For the purposes of Subchapter H of this chapter, equipment that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere.

(A) A control device does not include the following:

(i) passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics; or

(ii) inherent process equipment, which is equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that is installed and operated primarily for purposes other than compliance with applicable requirements. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment.

(B) If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular emission unit, then that definition shall apply for purposes of Subchapter H of this chapter.

(7) **Deviation** - Any indication of noncompliance with a term or condition of the permit as found using, at a minimum, compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit.

(8) **Deviation limit** - A designated value(s) or condition(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation.

(9) **Draft permit** - The version of a permit available for the 30-day comment period under public announcement or public notice and affected state review.

(10) **Emission unit** - A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants, including appurtenances.

(A) A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emission unit. The fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process.

(B) The term may also be used in this chapter to refer to a group of similar emission units.

(C) This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain program.

(11) **Final action** - Issuance or denial of the permit by the executive director.

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

(13) **Major source** -

(A) For pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate the following quantities:

(i) ten tons per year (tpy) or more of any single hazardous air pollutant listed under FCAA, §112(b) (Hazardous Air Pollutants);

(ii) 25 tpy or more of any combination of hazardous air pollutant listed under FCAA, §112(b); or

(iii) any quantity less than those identified in clause (i) or (ii) of this subparagraph established by the EPA through rulemaking.

(B) For radionuclides regulated under FCAA, §112, the term "major source" shall have the meaning specified by the EPA by rule.

(C) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of
refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil-fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) any stationary source category regulated under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 for which the EPA has made an affirmative determination under FCAA, §302(j) (Definitions).

(D) Any site, except those exempted under FCAA, §182(f) (NO_x Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (Plan Requirements for Nonattainment Areas), including the following:

(i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) in any ozone nonattainment area classified as "marginal or moderate";

(ii) any site with the potential to emit 50 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "serious";

(iii) any site with the potential to emit 25 tpy or more of VOC or NO_x in any ozone nonattainment area classified as "severe";

(iv) any site with the potential to emit ten tpy or more of VOC or NO_x in any ozone nonattainment area classified as "extreme";

(v) any site with the potential to emit 100 tpy or more of carbon monoxide (CO) in any CO nonattainment area classified as "moderate";

(vi) any site with the potential to emit 50 tpy or more of CO in any CO nonattainment area classified as “serious”;

(vii) any site with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10) in any PM-10 nonattainment area classified as “moderate”;

(viii) any site with the potential to emit 70 tpy or more of PM-10 in any PM-10 nonattainment area classified as “serious”; and

(ix) any site with the potential to emit 100 tpy or more of lead in any lead nonattainment area.

(E) The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source under subparagraph (D) of this paragraph, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.

(F) Any temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter or require a revision to the existing permit at the site.

(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

(14) **Notice and comment hearing** - Any hearing held under this chapter. Hearings held under this chapter are for the purpose of receiving oral and written comments regarding draft permits.

(15) **Periodic monitoring case-by-case determination**- A monitoring plan designed by the permit holder and approved by the executive director to satisfy §122.142(c) of this title (relating to Permit Content Requirements).

(16) **Periodic monitoring GOP** - A GOP issued under Subchapter F of this chapter which provides monitoring options established by the executive director to satisfy Subchapter G of this chapter.

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

(A) any permit, or group of permits covering a site, that is issued, renewed, or revised under this chapter; or

(B) any GOP, or group of GOPs, issued, renewed, or revised by the executive director under this chapter. The term “permit” refers to a CAM GOP or periodic monitoring GOP only when clearly indicated by the context.

(18) **Permit anniversary** - The date that occurs every 12 months after the initial permit issuance, the initial granting of the authorization to operate, or renewal.

(19) **Permit application** - An application for an initial permit, permit revision, permit renewal, permit reopening, GOP, or any other similar application as may be required.

(20) **Permit holder** - A person who has been issued a permit or granted the authority by the executive director to operate under a GOP.

(21) **Permit revision** - Any administrative permit revision, minor permit revision, or significant permit revision that meets the related requirements of this chapter.

(22) **Potential to emit** - The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration or

preconstruction authorization restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in acid rain provisions of the FCAA or the acid rain rules.

(23) **Preconstruction authorization** - Any authorization to construct or modify an existing facility or facilities under Chapter 116 of this title. In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under FCAA, §112(g) (Modifications) after delegation of §112(g) to the commission;

(B) any requirement established under FCAA, §112(j) (Equivalent Emission Limitation by Permit) after delegation of §112(j) to the commission; and

(C) where appropriate, any preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities) (as effective until December 1996) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).

(24) **Predictive emission monitoring system (PEMS)** - For purposes of Subchapter H of this chapter, a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(25) **Proposed permit** - The version of a permit that the executive director forwards to the EPA for a 45-day review period.

(26) **Provisional terms and conditions** - Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only requirement, under which the permit holder is authorized to operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

(A) Provisional terms and conditions will only apply to changes not requiring prior approval by the executive director.

(B) Provisional terms and conditions shall not authorize the violation of any applicable requirement or state-only requirement.

(C) Provisional terms and conditions shall be consistent with and accurately incorporate the applicable requirements and state-only requirements.

(D) Provisional terms and conditions for applicable requirements and state-only requirements shall include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards;

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph;
and

(iii) where applicable, the specific regulatory citations identifying any requirements that no longer apply.

(27) **Renewal** - The process by which a permit or an authorization to operate under a GOP is renewed at the end of its term under §§122.241, 122.501, or 122.505 of this title (relating to Permit Renewals; General Operating Permits; or Renewal of the Authorization to Operate Under a General Operating Permit).

(28) **Reopening** - The process by which a permit is reopened for cause and terminated or revised under §122.231 of this title (relating to Permit Reopenings).

(29) **Site** - The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). If a research and development operation does not produce products for commercial sale, it may be treated as a separate site from any manufacturing facility with which it is collocated.

(30) **State-only requirement** - Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the FCAA or under any applicable requirement.

(31) **Stationary source** - Any building, structure, facility, or installation that emits or may emit any air pollutant. Nonroad engines, as defined in 40 CFR Part 89 (Control of Emissions from New and In-use Nonroad Engines), shall not be considered stationary sources for the purposes of this chapter.

SUBCHAPTER B : PERMIT REQUIREMENTS

DIVISION 1 : GENERAL REQUIREMENTS

§122.110

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits;

§§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.110. Delegation of Authority to Executive Director.

The executive director may take action on any permit on behalf of the commission.

DIVISION 3 : PERMIT APPLICATION

§§122.130 - 122.132, 122.134, 122.139, 122.140

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision

for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.130. Initial Application Due Dates.

(a) Interim operating permit program.

(1) Owners or operators of the following sites shall submit initial applications under the interim operating permit program:

(A) any site with an affected unit subject to the requirements of the Acid Rain Program;

(B) any site with the following primary Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) (for purposes of this subparagraph, each site shall have only one primary SIC code):

(i) Petroleum and Natural Gas, 1311;

(ii) Natural Gas Liquids, 1321;

(iii) Electric Services, 4911;

(iv) Natural Gas Transmission, 4922;

(v) Natural Gas Transmission and Distribution, 4923; or

(vi) Petroleum Bulk Stations and Terminals, 5171.

(2) Except as provided in paragraph (3) of this subsection, applications for sites subject to the interim operating permit program shall be submitted by January 25, 1997.

(3) If an owner or operator has more than one site listed in paragraph (1)(B) of this subsection, the owner or operator shall submit initial permit applications for no less than 10% of those

sites by January 25, 1997. Applications for the remaining sites shall be submitted by July 25, 1997.

This paragraph does not apply to any site with an affected source.

(b) Full operating permit program.

(1) Owners or operators of any site subject to the requirements of this chapter on February 1, 1998, except those identified in subsection (a) of this section, shall submit abbreviated initial applications by February 1, 1998.

(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) Mining and Quarrying of Nonmetallic Mineral, Except Fuels, 14;

(B) Food and Kindred Products, 20;

(C) Lumber and Wood Products, Except Furniture, 24;

(D) Rubber and Miscellaneous Plastics Products, 30;

(E) Stone, Clay, Glass, and Concrete Products, 32;

(F) Fabricated Metal Products, Except Machinery and Transportation
Equipment, 34;

(G) Motor Freight Transportation and Warehousing, 42; and

(H) Automotive Repair, Services, and Parking, 75.

(3) Except as specified in paragraph (2) of this subsection, the executive director shall inform the applicant in writing of the deadline for submitting the remaining application information.

(c) After the effective date of the interim or full operating permit program. Owners and operators of sites identified in §122.120 of this title (relating to Applicability) that become subject to the interim or full program after the applicable application due dates identified in subsection (a) or (b) of this section, are subject to the following requirements.

(1) If the site is a new site or a site that will become subject to the program as the result of a change at the site, the owner or operator shall not operate the change, or the new emission units, before an abbreviated application is submitted under this chapter. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(2) If the site becomes subject to the program as the result of an action by the executive director or the EPA, the owner or operator will submit an abbreviated application no later than 12 months after the action that subjects the site to the requirements of this chapter.

(d) Applications submitted under 40 CFR 71 (Federal Operating Permit Programs).

(1) If 40 CFR 71 is implemented in Texas by the EPA, applications will only be required to be submitted to the EPA.

(2) If all or part of 40 CFR 71 is delegated to the commission, information required by this chapter and consistent with the delegation will be required to be submitted to the commission.

§122.131. Phased Permit Detail.

(a) Sites with 75 or more emission units in a nonattainment area, and sites with 150 or more emission units in an attainment area may qualify for the phased permit detail process. Eligibility for the phased permit detail process shall be based on the number of emission units individually listed in all the initial permit applications for the site.

(b) Applicants with sites that qualify for the phased permit detail process may submit in the initial permit application detailed applicability determination information required by §122.132(e)(3) of

this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits) for a portion of the emission units with a proposed schedule for the submission of the remaining detailed applicability determination information. For each emission unit, the initial permit application must include detail sufficient to clarify the applicant's obligations with respect to its applicable requirements, including emission limits and compliance terms.

(c) Any detailed applicability determination information not submitted with the initial permit application shall be submitted according to the schedule included as a term or condition of the permit.

(d) The schedule in the permit must require the incorporation of the remaining detailed applicability determinations into the permit at least annually through the reopening or renewal process. The applications for permit reopenings shall be submitted no later than 30 days after each permit anniversary.

(e) All detailed applicability determinations shall be codified in the permit no later than July 25, 2003, or during the first permit renewal, whichever occurs first.

(f) The reopening requirements of this section may be satisfied by the procedures for significant permit revisions or permit renewals.

§122.132. Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits.

(a) A permit application shall provide any information, including confidential information as addressed in Chapter 1 of this title (relating to Purpose of Rules, General Provisions), required by the executive director to determine the applicability of, or to codify, any applicable requirement or state-only requirement.

(b) An application for a general operating permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general operating permit.

(c) An applicant may submit an abbreviated initial permit application, containing only the information in this section deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates).

(d) An application for a site qualifying under §122.131 of this title (relating to Phased Permit Detail) may be submitted under the phased permit detail process.

(e) An application shall include, but is not limited to, the following information:

(1) a general application form and all information requested by that form;

(2) for each emission unit, information regarding the general applicability determinations, which includes the following:

(A) the general identification of each potentially applicable requirement and potentially applicable state-only requirement (e.g., NSPS Kb);

(B) the applicability determination for each requirement identified under subparagraph (A) of this paragraph; and

(C) the basis for each determination made under subparagraph (B) of this paragraph;

(3) for each emission unit, except as provided in §122.131 of this title, information regarding the detailed applicability determinations, which includes the following:

(A) the specific regulatory citations in each applicable requirement or state-only requirement identifying the following:

(i) the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph;

(B) the basis for each applicability determination identified under subparagraph (A) of this paragraph;

(4) a compliance plan including the following information:

(A) the following statement: "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term.";

(B) for all emission units addressed in the application, an indication of the compliance status with respect to all applicable requirements, based on, at a minimum, any compliance method specified in the applicable requirements;

(C) for any emission unit not in compliance with the applicable requirements identified in the application, the following information:

(i) the method used for assessing the compliance status of the emission unit;

(ii) a narrative description of how the emission unit will come into compliance with all applicable requirements;

(iii) a compliance schedule (resembling and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the site is subject), including remedial measures to bring the emission unit into compliance with the applicable requirements; and

(iv) a schedule for the submission, at least every six months after issuance of the permit, of certified progress reports;

(5) if applicable, information requested by the nationally-standardized forms for the acid rain portions of permit applications, and compliance plans required by the acid rain program;

(6) if applicable, a statement certifying that a risk management plan, or a schedule to submit a risk management plan has been submitted to the appropriate agency in accordance with FCAA, §112(r)(7) (Prevention of Accidental Releases);

(7) for applicants electing the phased permit detail process under §122.131 of this title, a proposed schedule for the incorporation of the remaining detailed applicability determinations into the permit;

(8) for applicants requesting a permit shield, any information requested by the executive director in order to determine whether to grant the shield; and

(9) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(f) The executive director shall make a copy of the permit application accessible to the EPA.

§122.134. Complete Application.

(a) An application is complete on the 61st day after receipt by the executive director, unless the executive director has requested additional information or otherwise notified the applicant of incompleteness.

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

(1) for initial permit issuance, all information required in §122.132 of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits);

(2) for permit renewal, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted;

(3) for the initial authorization to operate under a general operating permit, information necessary to determine qualification for, and to assure compliance with, the general operating permit;

(4) for the renewal of an authorization to operate under a general operating permit, an update of the information held by the executive director and any information required by this chapter that has not been previously submitted; or

(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 an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded).

(c) An applicant may submit an abbreviated initial permit application, containing only the information in §122.132 of this title deemed necessary by the executive director. The abbreviated

application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information, except where the deadline is specified in §122.130(b)(2) of this title (relating to Initial Application Due Dates).

§122.139. Application Review Schedule.

The executive director shall take final action to approve, void, or deny permit applications according to the following schedule.

(1) Under the interim operating permit program, for those initial applications required to be submitted by January 25, 1997, or July 25, 1997, the executive director shall take final action on at least one-third of those applications annually through July 25, 1999.

(2) Under the full operating permit program, for those initial applications required to be submitted, by February 1, 1998, the executive director shall take final action on at least one-third of those applications annually.

(3) For any permit application containing an early reduction demonstration under FCAA, §112(i)(5) (Early Reduction), the executive director shall take final action no later than nine months after receipt of the complete application.

(4) Except as noted in paragraphs (1) - (3) of this section, the executive director shall take final action on an application for an initial permit or permit renewal no later than 18 months after the date on which the executive director deems the application complete.

§122.140. Representations in Application.

The only representations in a permit application that become conditions under which a permit holder shall operate are the following:

- (1) representations in an acid rain permit application;
- (2) upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application;
- (3) upon the granting of the authorization to operate under a CAM GOP or periodic monitoring GOP, the information specified in §122.714(a) and §122.612 of this title, excluding the justification for those requirements; and
- (4) any representation in an application which is specified in the permit as being a condition under which the permit holder shall operate.

DIVISION 4 : PERMIT CONTENT

§122.142, §122.143

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision

for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.142. Permit Content Requirements.

(a) The conditions of the permit shall provide for compliance with the requirements of this chapter.

(b) Each permit issued under this chapter shall contain the information required by this subsection.

(1) Unless otherwise specified in the permit, each permit shall include the terms and conditions in §§122.143 - 122.146 of this title (relating to General Terms and Conditions;

Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(2) Each permit shall also contain specific terms and conditions for each emission unit regarding the following:

(A) the generally identified applicable requirements and state-only requirements (e.g., NSPS Kb);

(B) except as provided by the phased permit detail process, the detailed applicability determinations, which include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph.

(c) Each permit shall contain periodic monitoring requirements, as required by the executive director, that are designed to produce data that are representative of the emission unit's compliance with the applicable requirements.

(d) For permits undergoing the phased permit detail process, the permit shall contain a schedule for phasing in the detailed applicability determinations consistent with §122.131 of this title (relating to Phased Permit Detail).

(e) For emission units not in compliance with the applicable requirements at the time of initial permit issuance or renewal, the permit shall contain the following:

(1) a compliance schedule or a reference to a compliance schedule consistent with §122.132(e)(4)(C) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits); and

(2) a requirement to submit progress reports consistent with §122.132(e)(4)(C) of this title. The progress reports shall include the following information:

(A) the dates for achieving the activities, milestones, or compliance required in the compliance schedule;

(B) dates when the activities, milestones, or compliance required in the compliance schedule were achieved; and

(C) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(f) At the executive director's discretion, and upon request by the applicant, the permit may contain a permit shield for specific emission units.

(g) Where an applicable requirement is more stringent than a requirement under the acid rain program, both requirements shall be incorporated into the permit and shall be enforceable requirements of the permit.

§122.143. General Terms and Conditions.

Unless otherwise specified in the permit, the following general terms and conditions shall become terms and conditions of each permit.

(1) Compliance with the permit does not relieve the permit holder of the obligation to comply with any other applicable rules, regulations, or orders of the commission, or of the EPA, except for those requirements addressed by a permit shield.

(2) The term of the permit shall not exceed five years from the date of initial issuance or renewal of the permit. The authorization to operate under a general operating permit shall not exceed five years from the date the authorization was granted or renewed.

(3) Consistent with the authority in Texas Health and Safety Code, Chapter 382, Subchapter B (Powers and Duties of Commission), the permit holder shall allow representatives from the commission or the local air pollution control program having jurisdiction to do the following:

(A) enter upon the permit holder's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(B) access and copy any records that must be kept under the conditions of the permit;

(C) inspect any emission unit, equipment, practices, or operations regulated or required under the permit; and

(D) sample or monitor substances or parameters for the purpose of assuring compliance with the permit at any time.

(4) The permit holder shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit. Except as provided for in paragraph (5) of this section, any noncompliance with either the terms or conditions codified in the permit or the provisional terms and conditions, if any, constitutes a violation of the FCAA and the TCAA and may be grounds for enforcement action. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to comply with the permit terms and conditions of the permit.

(5) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal or before the granting of a new authorization to operate.

(6) In every case, the applicable requirements and state-only requirements are always enforceable.

(7) The permit may be reopened for cause and revised or terminated. Permit terms or conditions remain enforceable regardless of the following:

(A) the filing of a request by the permit holder for a permit revision, reopening, or termination;

(B) a notification of planned changes or anticipated noncompliance; or

(C) a notice of intent by the executive director for a permit reopening or termination.

(8) The executive director may request any information necessary to determine compliance with the permit or whether cause exists for revising, reopening, or terminating the permit. The permit holder shall submit the information no later than 60 days after the request, unless the deadline is extended by the executive director.

(9) If a federally enforceable only applicable requirement is adopted by the commission, the permit holder shall submit an application for an administrative permit revision for the removal of the federally enforceable only designation. The application shall be submitted no later than 12 months after the adoption of the requirement by the commission.

(10) If a state-only requirement is determined by the commission to be an applicable requirement, the permit holder shall submit an application for a significant permit revision for the incorporation of the requirement into the permit as an applicable requirement. The application shall be submitted no later than 12 months after the determination by the commission that the requirement is an applicable requirement.

(11) The permit holder shall pay fees to the commission consistent with the fee schedule in §101.27 of this title (relating to Emissions Fees).

(12) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(13) The permit does not convey any property rights of any sort, or any exclusive privilege.

(14) A copy of the permit shall be maintained at the location specified in the permit.

(15) For general operating permits, a copy of the permit, the enforceable general operating permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(16) Any report or annual compliance certification required by a permit to be submitted to the executive director shall contain a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(17) Representations in acid rain applications and applicability determinations, and the bases for the determinations in general operating permit applications are conditions under which the

permit holder shall operate. Representations in general operating permit applications for CAM and periodic monitoring, as specified in §122.140(3) of this title, are conditions under which the permit holder shall operate.

(18) No emissions from emission units addressed in the permit shall exceed allowances lawfully held under the acid rain program.

(19) State-only requirements will not be subject to any of the following requirements of this chapter: public notice, affected state review, notice and comment hearings, EPA review, public petition, recordkeeping, six-month monitoring reporting, six-month deviation reporting, compliance certification, or periodic monitoring.

DIVISION 5 : MISCELLANEOUS

§122.161

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which

provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.161. Miscellaneous.

(a) The commission shall not grant a variance, under Texas Health and Safety Code, §382.028, from the requirements of this chapter.

(b) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the commission or the EPA.

(c) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities, provided that the owner or operator has obtained any necessary preconstruction authorization.

(d) The requirements of Subchapter G or Subchapter H of this chapter (relating to Periodic Monitoring; and Compliance Assurance Monitoring) shall not be used to justify the approval of monitoring less stringent than the monitoring which is required by the TCAA, FCAA, or by an air pollution control agency having jurisdiction and are not intended to establish minimum requirements for

the purpose of determining the monitoring to be imposed under the TCAA, FCAA, or by an air pollution control agency having jurisdiction.

(e) If after permit issuance or the granting of an authorization to operate under a general operating permit, a site no longer meets the applicability criteria in §122.120 of this title (relating to Applicability), the executive director may administratively void the permit or the authorization to operate under a general operating permit.

(1) The permit holder shall demonstrate in writing that a site no longer meets the applicability criteria in §122.120 of this title and request that the permit or authorization to operate under a general operating permit be administratively voided by the executive director.

(2) If it is determined that the site meets the applicability criteria in §122.120 of this title after a permit or authorization to operate is administratively voided by the executive director, the owner or operator may be subject to enforcement action.

**SUBCHAPTER C : INITIAL PERMIT ISSUANCES, REVISIONS,
REOPENINGS, AND RENEWALS
DIVISION 2 : PERMIT REVISIONS
§§122.210, 122.213, 122.217**

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision

for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.210. General Requirements for Revisions.

(a) The permit holder shall submit an application to the executive director for a revision to a permit for those activities at a site which change, add, or remove one or more permit terms or conditions.

(b) If applicable, the permit holder shall submit an application to the executive director for a revision to a permit to address the following:

- (1) the adoption of an applicable requirement previously designated as federally enforceable only;
 - (2) the promulgation or adoption of a new applicable requirement;
 - (3) the adoption of a new state-only requirement;
 - (4) a change in a state-only designation; or
 - (5) the revision of a compliance assurance monitoring or periodic monitoring general operating permit.
- (c) The executive director shall make a copy of the permit application, the permit, and any required notices accessible to the EPA.
- (d) Provisional terms and conditions are not eligible for a permit shield.
- (e) The permit holder may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision submitted.

(f) Changes qualifying as administrative permit revisions may be processed as minor or significant permit revisions at the permit holder's discretion.

(g) Changes qualifying as minor permit revisions may be processed as significant permit revisions at the permit holder's discretion.

(h) General operating permits and authorizations to operate under general operating permits are not subject to the permit revision requirements of this subchapter, but instead are subject to the requirements of Subchapter F of this chapter (relating to General Operating Permits)

§122.213. Procedures for Administrative Permit Revisions.

(a) If the following requirements are met, changes at a site or required as the result of the adoption of a state-only requirement, requiring an administrative permit revision may be operated before issuance of the revision:

(1) the permit holder complies 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);

(2) the permit holder records the information required in §122.212(b) of this title
(relating to Applications for Administrative Permit Revisions) before the change is operated; and

(3) the permit holder maintains the information required by §122.212(b) of this title
with the permit until the permit is revised.

(b) In every case, the applicable requirements and state-only requirements are always
enforceable.

(c) The permit holder need not comply with the original terms and conditions codified in the
permit that have been replaced by provisional terms and conditions before issuance or denial of a
revision or renewal.

(d) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after each permit anniversary.

(e) An administrative permit revision may be issued by the executive director provided the following:

(1) the change meets the criteria for an administrative permit revision;

(2) the executive director has received an application; and

(3) the conditions of the permit provide for compliance with the requirements of this chapter.

(f) The executive director shall take final action on an administrative permit revision no later than 60 days after receipt of the application.

§122.217. Procedures for Minor Permit Revisions.

(a) If the following requirements are met, changes at a site requiring a minor permit revision may be operated before issuance of the revision:

(1) the permit holder complies 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);

(2) the permit holder submits to the executive director a notice containing the information required in §122.216(b) of this title (relating to Applications for Minor Permit Revisions) before the change is operated;

(3) the permit holder maintains the information required by §122.216(b) of this title with the permit until the permit is revised.

(b) For changes to a permit required as the result of the promulgation or adoption of an applicable requirement or, as appropriate, the revision of a compliance assurance monitoring general operating permit or periodic monitoring general operating permit, the following requirements apply.

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

(A) Chapter 116 of this title;

(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 shall record the information required in §122.216(b)(1) - (4) of this title before the compliance date of the new requirement or effective date of the repealed requirement. The information in §122.216(b)(1) - (5) of this title shall be submitted no later than 45 days after the compliance date of the new requirement or effective date of the repealed requirement.

(3) The permit holder shall maintain the information required in §122.216(b)(1) - (4) of this title with the permit until the permit is revised.

(c) In every case, the applicable requirements are always enforceable.

(d) The permit holder need not comply with the original terms and conditions codified in the permit that have been replaced by provisional terms and conditions before issuance or denial of a revision or renewal.

(e) The permit holder shall submit an application for a permit revision to the executive director no later than 30 days after each permit anniversary.

(f) A minor permit revision may be issued by the executive director provided the following:

(1) the changes meet the criteria for a minor permit revision;

(2) the executive director has received an application;

(3) the conditions of the permit provide for compliance with the requirements of this chapter; and

(4) the requirements of this chapter for public announcement, affected state review, and EPA review have been satisfied.

(g) The executive director shall take final action on the permit revision application no later than 15 days after the end of the EPA review period, or no later than 15 days after the resolution of any EPA objection, whichever is later.

**SUBCHAPTER D: PUBLIC ANNOUNCEMENT, PUBLIC NOTICE,
AFFECTED STATE REVIEW, NOTICE AND COMMENT HEARING,
NOTICE OF PROPOSED FINAL ACTION, EPA REVIEW, AND PUBLIC PETITION**

§122.322

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of

applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.322. Bilingual Public Notice.

(a) The requirements of this subsection are applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Education Code, Chapter 29, Subchapter B, and 19 Texas Administrative Code (TAC)

§89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs), 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 section. Each affected facility shall meet the following requirements.

(1) At the applicant's expense, an additional notice shall be published 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) Each notice under this section shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

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

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

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

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

(7) Each alternate language publication shall follow the requirements of §122.320 of this title (relating to Public Notice) not otherwise inconsistent with this subsection.

(8) At the applicant's expense, an additional sign shall be posted 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 posted in the alternate languages in which the bilingual education program would have been taught had the school not waived out of the bilingual education program.

(9) The alternate language signs shall be posted adjacent to each English language sign required in public notice.

(10) The alternate language signs shall meet all other requirements of §122.320 of this title.

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

(c) If the notices required by §122.320 of this title and §122.340 of this title (relating to Notice and Comment Hearing) are combined, the combined notice is subject to the requirements of this section.

**SUBCHAPTER D: PUBLIC ANNOUNCEMENT, PUBLIC NOTICE,
AFFECTED STATE REVIEW, NOTICE AND COMMENT HEARING,
NOTICE OF PROPOSED FINAL ACTION, EPA REVIEW, AND PUBLIC PETITION**

§122.350

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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

authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.350. EPA Review.

(a) EPA review requirements apply to initial issuances, minor permit revisions, significant permit revisions, reopenings, and renewals.

(b) The executive director shall submit the proposed permit to the EPA.

(1) For initial issuances, significant permit revisions, reopenings, and renewals the proposed permit shall be submitted to the EPA after the end of the public comment period.

(2) For minor permit revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(3) For general operating permit initial issuances and significant revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public comment period. For general operating permit minor permit revisions, the proposed permit shall be submitted to the EPA no earlier than the first day of the public announcement period.

(c) Upon receipt of the proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit. The EPA may only object to the issuance of any proposed permit which is not in compliance with the applicable requirements or the requirements of this chapter.

(d) The executive director may issue the permit provided the following:

(1) the EPA does not object to the issuance of the proposed permit;

(2) the EPA notifies the executive director that the EPA will not object to the issuance of the permit; or

(3) the executive director resolves any objections received.

(e) If the executive director fails, within 90 days of receipt of an objection, to revise the proposed permit and submit a revised permit, if necessary, in response to the objection, the EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under FCAA, Title V (relating to Permits).

SUBCHAPTER E: ACID RAIN PERMITS

§§122.410, 122.412, 122.414

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision

for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.410. Operating Permit Interface.

(a) The commission hereby adopts and incorporates by reference, except as specified in this section, the provisions of 40 Code of Federal Regulations (CFR) Part 72 (with an effective date of June 25, 1999, Part 74 (with an effective date of May 18, 1998, and Part 76 (with an effective date of May 1, 1998 for purposes of implementing an acid rain program that meets the requirements of FCAA, Title IV.

(b) Applicants for sources subject to 40 CFR 72, 74, and 76 shall comply with those requirements.

(c) If the provisions of 40 CFR 72, 74, and 76 conflict with or are not included in this chapter, the provisions of 40 CFR 72, 74, and 76 shall apply and take precedence except for the following.

(1) References to 40 CFR 70 in 40 CFR 72, 74, and 76 shall be satisfied by the requirements of this chapter for the purposes of implementing the acid rain program.

(2) The procedural requirements for acid rain permit revisions in 40 CFR 72, Subpart H (Acid Rain Permit Revisions) shall be satisfied by §122.414 of this title (relating to Acid Rain Permit Revisions).

§122.412. Acid Rain Permit Application Due Dates.

The designated representative shall submit acid rain permit applications for affected units subject to 40 Code of Federal Regulations (40 CFR) 72, 74, or 76 to the executive director by the following dates.

(1) Sulfur dioxide.

(A) Applications for initial Phase II acid rain permits with an existing unit under 40 CFR 72.6(a)(2) shall be submitted by January 1, 1996.

(B) Applications for Phase II acid rain permits for new units shall be submitted at least 24 months before the later of January 1, 2000 or the date on which the unit commences operation.

(C) Applications for Phase II acid rain permits for units under 40 CFR §72.6(a)(3)(ii) shall be submitted at least 24 months before the later of January 1, 2000 or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 megawatts of electricity.

(D) Applications for Phase II acid rain permits for units under 40 CFR §72.6(a)(3)(iii) shall be submitted at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.

(E) Applications for Phase II acid rain permits with a unit under 40 CFR §72.6(a)(3)(iv) or (vii) shall be submitted before the later of January 1, 1998, or the March 1 of the year following the three-year calendar period in which the unit fails to meet the requirements of 40 CFR §72.6(b)(4) or (7).

(F) Applications for Phase II acid rain permits with a unit under 40 CFR §72.6(a)(3)(v) or (vi) shall be submitted before the later of January 1, 1998, or the March 1 following the calendar year in which the unit fails to meet the requirements of 40 CFR §72.6(b)(5) or (6).

(2) Nitrogen oxide. Applications for initial Phase II acid rain permits for nitrogen dioxide for affected units subject to 40 CFR 76 shall be submitted by January 1, 1998.

(3) Opt-in sources. Applications for acid rain permits for opt-in sources to the acid rain program shall be submitted in accordance with 40 CFR 74.

§122.414. Acid Rain Permit Revisions.

(a) For the purposes of implementing the procedural requirements of 40 CFR 72, Subpart H (Acid Rain Permit Revisions Procedural Sections), the following sections of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) shall be substituted.

(1) The provisions of §122.212 and §122.213 of this title (relating to Applications for Administrative Permit Revisions and Procedures for Administrative Permit Revisions) shall be used to satisfy the procedural requirements of 40 CFR §72.83(b)(1) and §72.80(d) for acid rain permit administrative amendments, except that the executive director shall submit the revised portion of the acid rain permit to EPA.

(2) The following provisions shall be used to satisfy the procedural requirements of 40 CFR §72.82 for acid rain fast-track modifications with the following restrictions.

(A) An application for an acid rain fast-track modification must include, at a minimum, the following:

(i) a description of each change;

(ii) a description of the emission units affected;

(iii) a statement that the change qualifies for a fast-track modification;

and

(iv) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(B) An acid rain permit revision for a fast-track modification may be issued by the executive director provided the following:

(i) the changes meet the criteria for a fast-track modification;

(ii) the executive director has received an application;

(iii) the conditions of the acid rain permit provide for compliance with the requirements of this chapter; and

(iv) the requirements of the chapter for public notice as specified in subparagraph (E) of this paragraph, local program notification, affected state review, and EPA review have been satisfied.

(C) The designated representative shall:

(i) provide a copy of the complete application requesting a fast-track modification to the executive director, the EPA, affected states, and local air pollution control agencies with jurisdiction in the county in which the site is located; and

(ii) send a notification, consistent with subparagraph (E) of this paragraph, of the fast-track modification permit application to persons on a mailing list maintained by the chief clerk.

(D) Changes for a fast-track modification shall not be operated before the permit is revised.

(E) Within five days of submission of the application for a fast-track modification to the executive director, the designated representative shall comply with the public notice requirements in §122.320(b) - (m) of this title (relating to Public Notice) and §122.322 of this title (relating to Bilingual Public Notice), except for the provisions regarding a request for or notice of a

hearing or a public meeting. However, the application rather than the draft permit shall be the subject of public notice. In addition, each newspaper notice shall direct the public to submit comments to both the executive director and to the designated representative.

(F) The executive director shall consider the application for a fast-track modification and comments received and provide approval, in whole or in part with changes or conditions as appropriate, or disapproval of the acid rain permit revision within 90 days of the close of the public notice comment period.

(3) The provisions of §122.220 and §122.221 of this title (relating to Applications for Significant Permit Revisions and Procedures for Significant Permit Revisions) shall be used to satisfy the procedural requirements of 40 CFR §72.81(c) for acid rain permit modifications. However, at the discretion of the executive director, the procedural requirements for §§122.320, 122.322, and 122.350 of this title (relating to Public Notice; Bilingual Notice; and EPA Review) may run concurrently.

(4) The provisions of §122.231 of this title (relating to Permit Reopenings) shall be used to satisfy the procedural requirements of 40 CFR §72.85 for acid rain permit reopenings. However, at the discretion of the executive director, the procedural requirements for §§122.320, 122.322, and 122.350 of this title may run concurrently.

(b) The following provisions shall apply to the procedural requirements for acid rain permit revisions or modifications.

(1) Changes qualifying as administrative permit revisions may be processed as fast-track modifications or significant permit revisions at the option of the designated representative.

(2) Changes qualifying as fast-track modifications may be processed as significant permit revisions at the option of the designated representative.

(3) The designated representative may be subject to enforcement action if the change to the permit is later determined not to qualify for the type of permit revision or modification submitted.

(4) Provisional terms and conditions are not eligible for a permit shield.

SUBCHAPTER F : GENERAL OPERATING PERMITS

DIVISION 1 : PROCEDURAL REQUIREMENTS FOR GENERAL OPERATING PERMITS

§§122.501 - 122.506

STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision

for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051-382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.501. General Operating Permits.

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

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

(2) the requirements under §122.506 of this title (relating to Public Notice for General Operating Permits) have been satisfied;

(3) the requirements under §122.330 of this title (relating to Affected State Review) have been satisfied;

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

(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) Each general operating permit shall identify the terms and conditions with which the permit holder shall comply.

(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.

(5) The executive director may rescind a general operating permit if a notice of the proposed rescission is provided under §122.506 of this title (relating to Public Notice for General Operating Permits).

(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.

(g) After issuance of a general operating permit, the executive director may combine the general operating permit with a previously issued general operating permit. Notice of this action will be published in the Texas Register and on the commission's publicly accessible electronic media.

§122.502. Authorization to Operate.

(a) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who submit a complete application under §122.134 of this title (relating to Complete Application) and who qualify for the general operating permit.

(b) Upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application become conditions under which the permit holder shall operate. Upon the granting of the authorization to operate under a CAM GOP or periodic monitoring GOP, the information specified in §122.140(3) becomes a condition under which the permit holder shall operate.

(c) The permit holder may be subject to enforcement action for operating without a permit if the permit holder, having been granted the authorization to operate under a general operating permit, is later determined not to qualify for the general operating permit.

(d) Authorizations to operate under general operating permits shall have terms not to exceed five years.

(e) More than one authorization to operate under a general operating permit may be granted for a site.

(f) A copy of the permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(g) General operating permits shall not be authorized for affected units under the acid rain program.

(h) The executive director shall make a copy of the authorization to operate accessible to the EPA.

§122.503. Application Revisions for Changes at a Site.

(a) The permit holder shall submit an application for a new authorization to operate 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;

(2) a change in the CAM and periodic monitoring information specified in §122.140(3) of this title; or

(3) 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) The application for a general operating permit under this subsection shall contain at a minimum the following:

(1) a description of each change;

(2) a description of the emission unit affected;

(3) any changes in the applicability determinations;

(4) any changes in the bases of the applicability determinations;

(5) any changes in the CAM and periodic monitoring information as specified in §122.140(3) of this title;

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

(7) a statement that the emission units qualify for the general operating permit; and

(8) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director except changes to deviation limits as noted in §122.608(e) and §122.708(d):

(1) the permit holder complies 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;

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

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

(4) the permit holder operates under the representations in the general operating permit application, as specified in §122.140 of this title.

(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) In every case, the applicable requirements and state-only requirements are always enforceable.

(f) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who qualify.

(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) If it is later determined that the permit holder does not qualify for a revision applied for under this section, the permit holder may be subject to enforcement action for operation without a permit.

§122.504. Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded.

(a) If the applicability determinations, the bases for the determinations, or the CAM and periodic monitoring information, as specified in §122.140(3) of this title, in the general operating permit application change due to the promulgation or adoption 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 application for a new authorization to operate containing at a minimum the following information:

(A) a description of the emission unit affected;

(B) any changes in the applicability determinations;

(C) the basis of each determination identified under subparagraph (B) of this paragraph;

(D) any changes in the CAM and periodic monitoring information as specified in §122.140(3) of this title;

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

(F) a statement that the emission units qualify for the general operating permit;
and

(G) certification in accordance with §122.165 of this title (relating to certification by a Responsible Official).

(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 application is required as the result of the promulgation or adoption of an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) record the information required in paragraph (1)(A) - (F) 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 application for a new authorization to operate 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) - (F) of this subsection with the authorization to operate until a new authorization is granted.

(4) If the 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 application no later than 45 days after the issuance of the general operating permit; and

(B) maintain the 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) the applicability determinations remain unchanged; and
 - (3) the basis for each applicability determination remain unchanged.
 - (4) the CAM or periodic monitoring information specified in §122.140(3) of this title remains 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) In every case, the applicable requirements and state-only requirements are always enforceable.

(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.

§122.505. Renewal of the Authorization to Operate Under a General Operating Permit.

(a) Authorizations to operate under general operating permits shall expire no later than five years from the date of the initial authorization to operate or renewal of the authorization to operate.

(b) The executive director shall provide written notice to the permit holder that the authorization to operate under the general operating permit is scheduled for review.

(1) The notice will be provided by mail no later than 12 months before the expiration of the authorization to operate under the general operating permit.

(2) The notice shall specify the procedure for submitting a renewal application.

(3) Failure to receive notice does not affect the expiration date of the authorization or the requirement to submit a timely and complete application.

(c) A renewal application shall be submitted by the permit holder to the executive director at least six months, but no earlier than 18 months, before the date of expiration of the authorization to operate under the general operating permit.

(d) The executive director shall grant a request for a renewal of an authorization to operate under a general operating permit to applicants who submit a complete application under §122.243 of this title (relating to Permit Renewal Procedures) and who qualify for the general operating permit.

(e) Expiration of the authorization to operate terminates the permit holder's right to operate unless a timely and complete renewal application has been submitted. After a timely and complete renewal application is submitted, the permit holder may continue to operate under the terms and conditions of the previous authorization to operate until the new authorization to operate is granted or denied.

(f) In determining whether and under what conditions an authorization to operate under a general operating permit should be renewed, the executive director shall consider the following:

(1) whether the general operating permit, in conjunction with the general operating permit application, provides for compliance with all applicable requirements and an accurate listing of state-only requirements; and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(g) The executive director shall make a copy of the renewal application, general operating permit, and any required notices accessible to the EPA.

§122.506. Public Notice for General Operating Permits.

(a) Before the issuance, significant permit revision, or rescission 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 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 in the area affected by the general operating permit. If the general operating permit has statewide applicability, the notice shall be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Austin, Dallas, and Houston. 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.

(i) If the executive director combines general operating permits as specified in §122.501(g) of this title, notice of this action will be published in the Texas Register and the commission's publicly accessible electronic media.

SUBCHAPTER G : PERIODIC MONITORING

§§122.600, 122.602, 122.604, 122.606, 122.608, 122.610, 122.612

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and notification to other governmental entities for federal operating permits; §382.061, which provides for

delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission with 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.600. Implementation of Periodic Monitoring.

(a) Except as provided in subsection (b) of this section, §122.142(c) of this title (relating to Permit Content Requirements) shall be implemented through one of the following mechanisms:

(1) a periodic monitoring general operating permit, which provides monitoring options established by the executive director, in accordance with the requirements of this subchapter; or

(2) a periodic monitoring case-by-case determination, in which the permit holder designs a monitoring approach for approval by the executive director, in accordance with the requirements of this subchapter.

(b) The executive director may establish periodic monitoring requirements through the permitting process for specific emission limitations or standards to satisfy §122.142(c) of this title.

(c) Any requirements for an emission unit established under Subchapter H of this chapter (relating to Compliance Assurance Monitoring) shall satisfy the requirements of this subchapter.

§122.602. Periodic Monitoring Applicability.

(a) The requirements of this subchapter apply to an emission unit at a site that is subject to this chapter provided the emission unit is subject to an emission limitation or standard in an applicable requirement except as noted in subsection (b) of this section.

(b) The requirements of this subchapter shall not apply to emission limitations or standards for which the executive director has determined that the applicable requirement has sufficient periodic monitoring (which may consist of recordkeeping). These emission limitation or standards include, but are not limited to, the following:

(1) emission limitations or standards proposed by the EPA after November 15, 1990 under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 (Hazardous Air Pollutants);

(2) emission limitations or standards under FCAA, Title IV (the Acid Rain Program);

(3) emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test); and

(4) other emission limitations or standards specified as exempt by the EPA.

§122.604. Periodic Monitoring Application Due Dates.

(a) Unless otherwise approved by the executive director, the permit holder shall submit an application for a periodic monitoring general operating permit (GOP) or a periodic monitoring case-by-case determination in accordance with the following schedule.

(1) For an emission unit that is subject to an emission limitation or standard on or before the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following issuance of the periodic monitoring GOP.

(2) For an emission unit that becomes subject to an emission limitation or standard after the issuance date of a periodic monitoring GOP containing the emission limitation or standard, the permit holder shall submit an application no later than 30 days after the end of the second permit anniversary following the date that the emission unit became subject to the emission limitation or standard.

(b) An application for periodic monitoring requirements established under §122.600(b) of this title (relating to Implementation of Periodic Monitoring) shall be submitted upon request by the executive director.

§122.606. Applications for Periodic Monitoring.

(a) An owner or operator shall submit an application for periodic monitoring which must include at a minimum the following:

- (1) the identification of the emission unit;
- (2) the emission limitation or standard subject to periodic monitoring;

(3) proposed periodic monitoring requirements from the periodic monitoring general operating permit or developed by the permit holder, and any information required by the executive director to evaluate those requirements; and

(4) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(b) The proposed periodic monitoring requirements submitted in the application shall be designed to produce data that are representative of the emission unit's compliance with the applicable requirement.

§122.608. Procedures for Incorporating Periodic Monitoring Requirements.

(a) For permit holders applying for a periodic monitoring case-by-case determination, periodic monitoring requirements shall be initially incorporated into the permit in accordance with paragraph (1) or (2) of this subsection, except as in subsection (d) of this section.

(1) If the permit holder is authorized to operate under a general operating permit (GOP), the following requirements apply:

(A) the permit holder shall submit an application for a permit other than a GOP including the information specified in §122.606 of this title (relating to Applications for Periodic Monitoring); and

(B) the requirements of §122.201 of this title (relating to Initial Permit Issuance) shall be satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for significant permit revisions apply:

(A) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(B) the requirements of §122.221(b) and (c) of this title (relating to Procedures for Significant Permit Revisions) shall be satisfied.

(b) For permit holders applying for a periodic monitoring GOP, periodic monitoring requirements shall be initially incorporated into a permit or GOP application in accordance with paragraph (1) or (2) of this subsection, except as in subsection (d) of this section.

(1) If the permit holder is authorized to operate under a GOP, the following requirements apply:

(A) the permit holder shall submit an application including the information in §122.606 of this title;

(B) the representations in the GOP application as specified in §122.140(3) of this title (relating to Representations in Application) shall provide for compliance with the requirements of this subchapter; and

(C) the executive director shall grant an authorization to operate provided the requirements of this paragraph are satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for minor permit revision apply:

(A) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(B) the requirements of §122.217(f) and (g) of this title (relating to Procedures for Minor Permit Revision) shall be satisfied.

(c) Except as in subsection (d) of this section, periodic monitoring requirements implemented under §122.600(b) of this title (relating to Implementation of Periodic Monitoring) shall be initially incorporated into a permit or GOP application through the procedures in §122.201 of this title (relating to Initial Permit Issuance), the procedures in Subchapter F of this chapter (relating to General Operating Permits), or the following procedures for minor permit revision:

(1) the permit holder shall submit an application including the information specified in §122.606 of this title; and

(2) the requirements of §122.217(f) and (g) of this title shall be satisfied.

(d) If the periodic monitoring requirements are incorporated at the time of renewal, the requirements of §122.243 of this title (relating to Permit Renewal Procedures), or §122.505 of this title (relating to Renewal of the Authorization to Operate Under a General Operating Permit) apply.

(e) After CAM requirements are incorporated into a permit or a new authorization to operate under a CAM GOP is granted, subsequent revisions to periodic monitoring requirements shall be governed by the requirements of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) or Subchapter F of this chapter, as appropriate. However, changes in deviation limits, other than changes required as the result of the promulgation or adoption of applicable requirement, shall not be operated before the permit or authorization to operate under a general operating permit is revised.

§122.610. Periodic Monitoring General Operating Permits Content.

(a) Except as in subsection (b) of this section, each periodic monitoring general operating permit (GOP) shall include periodic monitoring requirements designed to produce data that are representative of compliance with the applicable requirement.

(b) The periodic monitoring GOP may require the submission of an application for a periodic monitoring case-by-case determination for a particular emission limitation or standard.

§122.612. Periodic Monitoring Requirements in Permits and General Operating Permit Applications.

(a) The permit or general operating permit application upon granting of the authorization to operate shall include, at a minimum, the following periodic monitoring requirements:

- (1) the identification of the emission unit;
- (2) the emission limitation or standard subject to periodic monitoring;
- (3) periodic monitoring requirements that are designed to produce data that are representative of the emission unit's compliance with the applicable requirement; and
- (4) special terms and conditions, as appropriate.

(b) Unless otherwise approved by the executive director, the permit holder shall begin conducting the monitoring required under this subchapter upon issuance, revision, or renewal of the permit or the granting of the authorization to operate for these requirements.

SUBCHAPTER H : COMPLIANCE ASSURANCE MONITORING

§§122.700, 122.702, 122.704, 122.706, 122.708, 122.710, 122.712, 122.714, 122.716

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code, the TCAA, including §§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; §382.0205, which provides the commission authority to protect against adverse affects related to acid deposition; §382.032, which provides for 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 authority to issue federal operating permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits; §§382.0513 - 382.0515 and 382.0517, which provide the commission authority to establish and enforce permit conditions; to require sampling, monitoring, and certification; to require permit applications; and to determine administrative completeness of applications; §§382.054 - 382.0543, which provide for federal operating permits; administration and enforcement of federal operating permits; issuance of federal operating permits and appeal of delays; and review and renewals of federal operating permits; §382.056, which provides for notice of intent to obtain a permit or permit review and provides for permit hearings for federal operating permits; §§382.0561 - 382.0564, which provide for federal operating permit public hearings; notices of decision for federal operating permits; public petition of federal operating permits to the administrator; and

notification to other governmental entities for federal operating permits; §382.061, which provides for delegation of powers and duties under §§382.051 - 382.0563 and 382.059, appeals of executive director decisions and petitions under §382.0563 and appeals under §382.056; and under the Texas Water Code (TWC), including §5.103, which provides the commission 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 authority to establish and approve commission policy; §5.122, which provides delegation of uncontested matters to the executive director; §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.

§122.700. Implementation of Compliance Assurance Monitoring.

(a) The requirements of 40 Code of Federal Regulations (40 CFR) Part 64 (Compliance Assurance Monitoring) shall be implemented through one of the following mechanisms:

(1) a compliance assurance monitoring general operating permit (CAM GOP), which provides monitoring options established by the executive director, in accordance with the requirements of this subchapter; or

(2) a CAM case-by-case determination, in which the permit holder designs a monitoring approach for approval by the executive director, in accordance with the requirements of this subchapter.

(b) References in 40 CFR 64 to 40 CFR 70 (Operating Permit Program) shall be satisfied by the requirements of this chapter for the purpose of implementing 40 CFR 64.

§122.702. Compliance Assurance Monitoring Applicability.

(a) In this subchapter, each emission unit shall be considered separately with respect to each air pollutant and the term control device, as used in this subchapter, shall have the meaning defined in §122.10(6) of this title.

(b) Except for emission units that are exempt under subsection (d) of this section, the requirements of this subchapter apply to an emission unit at a major source subject to this chapter provided the following:

(1) the emission unit is subject to an emission limitation or standard for an air pollutant (or surrogate thereof) in an applicable requirement, except as noted in subsection (c) of this section;

(2) the emission unit uses a control device to achieve compliance with the emission limitation or standard in paragraph (1) of this subsection; and

(3) the emission unit has the pre-control device potential to emit greater than or equal to the amount in tons per year required for a site to be classified as a major source, as defined in this chapter.

(c) The requirements of this subchapter shall not apply to any of the following:

(1) emission limitations or standards proposed by the EPA after November 15, 1990 under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 (Hazardous Air Pollutants);

(2) emission limitations or standards under FCAA, Title VI (Stratospheric Ozone Protection);

(3) emission limitations or standards under FCAA, Title IV (the Acid Rain Program);

(4) emission limitations or standards that apply solely under an emissions trading program approved or promulgated by the EPA under the FCAA that allows for trading emissions;

(5) emissions caps that meet the requirements specified in 40 Code of Federal Regulations (40 CFR) §70.4(b)(12) (State Program Submittals and Transition);

(6) emission limitations or standards for which an applicable requirement specifies a continuous compliance determination method, unless the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device (such as a surface coating line controlled by an incinerator for which

continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test);

(7) other emission limitations or standards specified as exempt by the EPA; or

(8) emission limitations or standards regulating fugitive emissions.

(d) The requirements of this subchapter shall not apply to a utility unit, as defined in 40 CFR §72.2 (Definitions), that is municipally-owned if the permit holder documents in a permit application the following:

(1) the utility unit is exempt from all monitoring requirements in 40 CFR 75 (Continuous Emission Monitoring) (including the appendices);

(2) the utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations, as demonstrated by historical operating data and relevant contractual obligation, and will be operated consistent with that purpose throughout the permit term; and

(3) the actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation (or the total time the unit has been in operation for a unit in operation less than three years), are less than 50% of the amount in tons per year required for a site to be classified as a major source and are expected to remain so.

§122.704. Compliance Assurance Monitoring Application Due Dates.

Unless otherwise approved by the executive director, the permit holder shall submit an application for a compliance assurance monitoring general operating permit (CAM GOP) or a CAM case-by-case determination in accordance with the following schedule.

(1) For an emission unit that is subject to this subchapter on or before the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following issuance of the CAM GOP.

(2) For an emission unit that becomes subject to this subchapter after the issuance date of a CAM GOP containing an emission limitation or standard that applies to that emission unit, the permit holder shall submit an application no later than 30 days after the second permit anniversary following the date that the emission unit became subject to this subchapter.

(3) If a control device is common to more than one emission unit, the permit holder shall submit an application for each emission unit based on the date the CAM GOP that contains the emission limitation or standard that applies to the emission unit is issued, in accordance with paragraphs (1) or (2) of this section.

§122.706. Applications for Compliance Assurance Monitoring.

(a) or permit holders applying for a CAM GOP, the following requirements apply:

(1) The application shall include at a minimum the following:

(A) the identification of the emission unit;

(B) the emission limitation or standard subject to CAM;

(C) an appropriate monitoring option provided in a CAM GOP;

(D) if not defined by the monitoring option selected, a deviation limit;

(E) a justification for any deviation limit proposed under paragraph (4) of this subsection in accordance with subsection (c) of this section; and

(F) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(2) The proposed CAM requirements submitted in the application shall be designed to provide reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(3) Unless otherwise specified in the CAM GOP, the permit holder shall provide justification for any deviation limit according to one of the following.

(A) The permit holder shall submit the following performance test data:

(i) control device operating parameter data from an applicable performance test conducted under conditions specified by the applicable rule;

(ii) if the applicable rule does not specify testing conditions or only partially specifies testing conditions, control device operating parameter data from an applicable performance test conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the emission unit; and

(iii) a statement that no changes to the emission unit, including control device, have taken place that could result in a significant change in the control system performance, indicators (such as emissions, control device parameters, process parameters, or inspection and maintenance activities) to be monitored, or deviation limits since the performance test was conducted.

(B) The permit holder shall submit manufacturer's recommendations, engineering calculations, and/or historical data.

(4) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit holder shall submit a monitoring option from the CAM GOP that includes the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

(b) For permit holders applying for a CAM case-by-case determination, the application shall be submitted in accordance with 40 CFR §64.3 (Monitoring Design Criteria) and 40 CFR §64.4 (Submittal Requirements).

§122.708. Procedures for Incorporating Compliance Assurance Monitoring Requirements.

(a) For permit holders applying for a compliance assurance monitoring (CAM) case-by-case determination, CAM requirements shall be initially incorporated into the permit in accordance with paragraph (1) or (2) of this subsection, except as in subsection (c) of this section.

(1) If the permit holder is authorized to operate under a general operating permit (GOP), the following apply:

(A) the permit holder shall submit an application for a permit other than a general operating permit including the information specified in 40 Code of Federal Regulations (40 CFR) §64.3 (Monitoring Design Criteria) and §64.4 (Submittal Requirements); and

(B) the requirements of §122.201 of this title (relating to Initial Permit Issuance) shall be satisfied.

(2) If the permit holder is authorized to operate under a permit other than a GOP, the following requirements for significant permit revisions apply:

(A) the permit holder shall submit an application including information specified in 40 CFR §64.3 and §64.4 and a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official); and

(B) the requirements of §122.221(b) and (c) of this title (relating to Procedures for Significant Permit Revisions) shall be satisfied.

(b) For permit holders applying for a CAM GOP, CAM requirements shall be initially incorporated into a permit or GOP application in accordance with paragraph (1) or (2) of this subsection, except as in subsection (c) of this section.

(1) If the permit holder is authorized to operate under a GOP, the following apply:

(A) the permit holder shall submit an application including the information in §122.706 of this title (relating to Applications for CAM General Operating Permits);

(B) the representations in the GOP application as specified in §122.140(3) of this title (relating to Representations in Application) shall provide for compliance with the requirements of this subchapter; and

(C) the executive director shall grant an authorization to operate, provided the requirements of this paragraph are satisfied.

(2) If the permit holder is authorized under a permit other than a GOP, the following requirements for minor permit revision apply:

(A) the permit holder shall submit an application including the information specified in §122.706 of this title; and

(B) the requirements of §122.217(f) and (g) of this title (relating to Procedures for Minor Permit Revision) shall be satisfied.

(c) If CAM requirements are initially incorporated into the permit or GOP application at the time of renewal, the requirements of §122.243 of this title (relating to Permit Renewal Procedures) or §122.505 of this title (relating to Renewal of the Authorization to Operate Under a General Operating Permit) shall apply, respectively.

(d) After CAM requirements are incorporated into a permit or a new authorization to operate under a CAM GOP is granted, subsequent revisions to those CAM requirements shall be governed by the requirements of Subchapter C of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals) or Subchapter F of this chapter (relating to General Operating Permits), as

appropriate. However, changes in deviation limits, other than changes required as the result of a promulgation or adoption of an applicable requirement shall not be operated before the permit or authorization to operate under a GOP is revised.

§122.710. Compliance Assurance Monitoring General Operating Permit Content.

(a) Each monitoring option for an emission limitation or standard in a compliance assurance monitoring general operating permit (CAM GOP) shall contain, at a minimum, the following:

(1) one or more indicators of performance (such as emissions, control device parameters, process parameters, or inspection and maintenance activities);

(2) for each indicator of performance, a deviation limit or procedures for establishing a deviation limit;

(3) monitoring specifications and procedures that provide a reasonable assurance that the data generated by the monitoring present valid information;

(4) if appropriate, the averaging period for the purpose of determining whether a deviation has occurred; and

(5) specifications for the minimum monitoring frequency.

(A) For emission units with the post-control device potential to emit, greater than or equal to the amount in tons per year required for a site to be classified as a major source, as defined in this chapter, the CAM GOP shall contain the requirement for the permit holder to collect data as follows:

(i) four or more data values equally spaced over each hour; or

(ii) at a reduced data collection frequency, if appropriate, based on the indicators of performance (such as emissions, control device parameters, process parameters, or inspection and maintenance activities), emission unit, control device, or data collection mechanism. However, the monitoring shall include some data collection at least once per 24-hour period.

(B) For all other emission units, the CAM GOP shall contain the requirement for the permit holder to collect data at least once per 24-hour period.

(b) The CAM requirements in the CAM GOP shall be designed to provide a reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(c) The CAM GOP may require the submission of an application for a CAM case-by-case determination for a particular emission limitation or standard.

§122.712. General Terms and Conditions for Compliance Assurance Monitoring.

(a) Unless otherwise specified in the compliance assurance monitoring general operating permit (CAM GOP), the following general terms and conditions shall become terms and conditions of each CAM GOP.

(1) The permit holder shall install, calibrate, maintain, and operate a monitoring system according to the manufacturer's specifications or other written procedures that provide adequate assurance that the system would reasonably be expected to monitor accurately.

(2) At all times, the permit holder shall properly maintain the monitoring system, including, but not limited to, maintaining parts if necessary, for routine repairs of the monitoring system.

(3) The permit holder shall collect data at all required intervals during emission unit operation, except for, as applicable, monitoring malfunctions, repairs associated with monitoring malfunctions, and required quality assurance or control activities.

(A) Data recorded during monitoring malfunctions, repairs associated with malfunctions, and required quality assurance or control activities shall not be used for purposes of this subchapter.

(B) The permit holder shall maintain records of the beginning date and time, ending date and time, and cause (including unknown cause, if applicable) for monitoring downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable).

(C) The permit holder shall use all the data collected during all periods other than those identified in subparagraph (A) of this paragraph in assessing the operation of the control device and associated control system.

(D) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions and shall be considered deviations.

(4) All incidents of monitoring downtime recorded under paragraph (3)(B) of this subsection shall be reported in accordance with §122.145 of this title (relating to Reporting Terms and Conditions).

(5) The permit holder shall respond to deviations in the following manner.

(A) The permit holder shall restore operation to its normal manner as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

(B) The permit holder shall minimize the period of any startup, shutdown, or malfunction and take any necessary corrective actions to restore normal operation and prevent the likely recurrence of the cause of a deviation (other than those caused by excused startup or shutdown conditions).

(6) If the permit holder identifies a failure to achieve compliance with an emission limitation or standard, for which the approved monitoring did not indicate a deviation while providing valid data, or the results of compliance or performance testing document a need to modify the existing CAM requirements, the permit holder shall notify the executive director within 30 days. If necessary, the permit holder shall apply for a revision to the CAM requirements, or a new permit, if appropriate, consistent with the procedures of Subchapter C or F of this chapter (relating to Initial Permit Issuances, Revisions, Reopenings, and Renewals; and General Operating Permits).

(7) CAM requirements established under this subchapter are subject to §§122.144 - 122.146 of this title (relating to Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(8) The permit holder shall comply with the requirements of a quality improvement plan according to §122.716 of this title (relating to Quality Improvement Plans), if required by the executive director.

(b) If CAM is implemented through a CAM case-by-case determination, the permit will specify which of the general terms and conditions apply.

§122.714. Compliance Assurance Monitoring Requirements in Permits and General Operating Permit Applications.

(a) For permit holders using the CAM GOP implementation mechanism, the following apply:

(1) The compliance assurance monitoring (CAM) requirements shall be incorporated into the permit or general operating permit (GOP) application upon granting of the authorization to operate and shall include, at a minimum, the following:

(A) the identification of the emission unit;

(B) the emission limitation or standard subject to CAM;

(C) an appropriate monitoring option provided in a CAM GOP;

(D) if not defined by the monitoring option selected, a deviation limit that provides a reasonable assurance of compliance;

(E) unless otherwise approved by the executive director, the requirements of §122.712 of this title (relating to General Terms and Conditions for CAM General Operating Permits); and

(F) unless otherwise approved by the executive director, the special terms and conditions contained in the CAM GOP.

(2) Unless otherwise approved by the executive director, the permit holder shall conduct the monitoring required under this subchapter upon revision or renewal of the permit or the granting of the authorization to operate under the CAM GOP.

(3) The CAM requirements incorporated into the permit or GOP application upon granting of the authorization to operate shall provide a reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(4) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit or GOP application upon granting of the authorization to operate shall require the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

(b) For permit holders using the CAM case-by-case determination implementation mechanism, 40 Code of Federal Regulations (40 CFR) §64.6 (Approval of Monitoring) and 40 CFR §64.7 (Operation of Approved Monitoring) apply.

§122.716. Compliance Assurance Monitoring Quality Improvement Plans.

(a) Based on the frequency of deviations, the cause of deviations, the magnitude of deviations, the permit holder's response to deviations, or other information that indicates that the emission unit or control device is not being maintained and operated consistent with good air pollution control practices, the executive director may require implementation of a quality improvement plan (QIP).

(b) A QIP shall include, as appropriate, steps to evaluate and correct control performance, process operation changes, preventative maintenance practices, and more frequent or improved monitoring.

(c) The permit holder shall maintain the written QIP with the permit or authorization to operate under the CAM GOP.