

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §101.1, concerning Definitions; §101.2, concerning Multiple Air Contaminant Sources or Properties; §101.10, concerning Emissions Inventory Requirements; and §101.30, concerning Conformity of General Federal and State Actions to State Implementation Plans. The commission also proposes a new §101.28, concerning Stringency Determination for Federal Operating Permits. The proposed amendments to §§101.1, 101.10, and 101.30, and the new 101.28 are amendments to the State Implementation Plan (SIP).

EXPLANATION OF PROPOSED RULE

This proposal would change the title of Chapter 101 from “General Rules” to “General Air Quality Rules.” The proposed action removes the following definitions from §101.1, because they are either duplicated in other chapters of Title 30 of the Texas Administrative Code (TAC) or used in rules that have been previously repealed: “act,” “alcohol substitutes (used in offset lithographic printing),” “alcohol (used in offset lithographic printing),” “architectural coating,” “article” (as in provision of law), “automotive basecoat/clearcoat system (used in vehicle refinishing (body shops))” and the related equations, “automotive precoat (used in vehicle refinishing (body shops)),” automotive pretreatment (used in vehicle refinishing (body shops)),” “automotive primer or primer surfacers (used in vehicle refinishing (body shops)),” “automotive sealers (used in vehicle refinishing (body shops)),” “automotive specialty coatings (used in vehicle refinishing (body shops)),” “automotive three stage system (used in vehicle refinishing (body shops))” and the related equations, “automotive wipe-down solutions (used in vehicle refinishing (body shops)),” “bakery oven,” “batch (used in offset lithographic printing),” “capture efficiency,” “cleaning solution (used in offset lithographic printing),” “clear coat

(used in wood parts and products coating),” “clear sealers (used in wood parts and products coating),” “coating application system,” “coating line,” “consumer-solvent products,” “drum,” “extreme performance coating,” “final repair coat (used in wood parts and products coating),” “flexographic printing process,” “forage,” “fountain solution (used in offset lithographic printing),” “gasoline bulk plant,” “gasoline terminal,” “hand-held lawn and garden and utility equipment,” “inorganic fluoride compounds,” “lithography (used in offset lithographic printing),” “low-bake coatings,” “natural gas/gasoline processing,” “non-flat architectural coating,” “non-heatset (used in offset lithographic printing),” “offset lithography,” “opaque ground coats and enamels (used in wood parts and products coating),” “packaging rotogravure printing,” “pail (metal),” “polymer and resin manufacturing process,” “population equivalent,” “pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents)” and the related equation, “pounds of volatile organic compounds (VOC) per gallon of solids” and the related equation, “printing line,” “publication rotogravure printing,” “rotogravure printing,” “semitransparent spray stains and toners (used in wood parts and products coating),” “semitransparent wiping and glazing stains (used in wood parts and products coating),” “shellacs (used in wood parts and products coating),” “surface coating processes,” Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation,” “Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process,” “Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation,” “Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit,” “Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process,” “synthetic organic chemical manufacturing process” and the related Table II, “tank-truck tank,” “topcoat (used in wood parts and products coating),” “transport vessel,” “vapor balance system,” “vapor recovery system,” “vapor-tight,” “varnishes (used in wood parts and products

coating),” “vehicle refinishing (body shops),” and “wash coat (used in wood parts and products coating).”

Because they are used in multiple Chapters of 30 TAC, the following definitions are being moved from the existing §101.30, concerning Conformity of General Federal Actions to State Implementation Plans, to §101.1: “criteria pollutant or standard,” “maintenance plan,” “metropolitan planning organization (MPO),” and “National Ambient Air Quality Standards (NAAQS).” The definitions of “maintenance area” and “NEPA” are proposed for deletion from §101.30 because they are duplicated in Chapter 101 and Chapter 3, respectively. Section 101.30 is also being amended to correct obsolete acronyms and update references to Chapter 114, concerning Control of Air Pollution from Motor Vehicles.

The proposal amends the definition of “incinerator” to exclude combustion devices burning clean scrap wood as an exclusive fuel for heat recovery. Because waste wood is considered a solid waste, this amendment will allow operators of wood-fired boilers to operate exclusively under regulations applicable to boilers. The commission has examined this practice through permitting applications and determined that it is safe and produces low levels of nonhazardous emissions. This change is based on analysis of comments received during quadrennial rules review as required by the General Appropriations Act, Article IX, §167 of the 75th Legislature, 1997.

The commission also proposes to amend the definition of “nonattainment” area to reflect the federal reclassification of the Dallas/Ft. Worth area (DFW) from a “moderate” to a “serious” nonattainment area for ozone.

This proposal would modify the definition of “new source” to state that a new source is one which commenced construction or was modified after March 5, 1972. This definition is consistent with the definition of “new source” in 30 TAC Chapter 116.

The proposed amendments to §101.1 would add certain compounds to the list of those excluded from the definition of “volatile organic compound” in response to an identical action by the United States Environmental Protection Agency (EPA). The excluded compounds are weak photochemical reactors and are not significant contributors to the formation of ozone, and it is, therefore, appropriate to exclude them from regulations limiting emissions of VOCs. The compounds include: difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane, 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane, 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane, 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane, and methyl acetate.

To simplify and reduce the number of definitions, the definition of “net ground level concentration” would be amended to include the concepts of “upwind level” and “downwind level,” which would be deleted from §101.1. The definition of “control system” would be amended to include devices and

combinations of devices used to control air contaminants. Subsequently, the definitions of “control device” and “system or device” would be deleted.

The changes to §101.1, concerning Definitions, would also add new definitions of “flare” and “vapor combustor” because these terms are used in multiple chapters of 30 TAC. These definitions are intended to explain the nature of these devices so that operational requirements are clearly understood by source operators. The definitions in §101.1 would be numbered according to *Texas Register* requirements and corrected for obsolete or incorrect administrative references and use of acronyms.

The General Appropriations Act, Article IX, §167 of the 75th Legislature, 1997 requires that state agencies review their rules every four years to determine the continued need for the rules. During that review, agencies also receive comments on recommended amendments. In response to the quadrennial rule review of Chapter 101, the commission is proposing amendments to §101.2, Multiple Air Contaminant Sources or Properties. Subsection 101.2(b) allows two or more property owners or operators to petition the commission to have their properties designated as a single property for purposes of demonstrating compliance with commission regulations and the control of air emissions.

The proposed amendments to §101.2(b) would authorize the executive director to approve petitions for single property designation. However, consistent with commission policy regarding action which must be taken by the commission rather than the executive director, the proposed rule prohibits the executive director from acting on the petition if new issues that require interpretation of commission policy are

raised. Action by the executive director would be subject to a motion for reconsideration under the commission's rules.

It has been the policy of the commission concerning single property designations to allow the combination of properties that are contiguous except for public right-of-ways provided all emission points are located within a single portion of the property that is not crossed by a public right-of-way. The proposed amendments to §101.2(b)(2)(A) clarify the rule language to allow the continued application of this policy. The commission specifically seeks comments on this policy. Additionally, the commission is soliciting comments on the benefits and detriments of single property designation as it is currently implemented.

The amendments would require that all persons with ownership interests in real property, including leaseholders, within the property must consent to the agreement. A single property designation allows more than one property to be considered as one for purposes of determining compliance with commission rules, including impacts from emissions. Therefore, the commission needs to be informed that all owners, including those who do not emit air contaminants, understand how the commission will evaluate emissions from the emission points within the single property boundary. This requirement is consistent with the commission's rules which allow an operator to act on behalf of owners in air permitting matters in 30 TAC Chapter 116. Petitioners would be required to provide air account numbers to facilitate processing the petition and to allow the maintenance of records by the commission. The amendments to §101.1(b) would also require that the written agreement of parties to a single property designation be a sworn document. Although this has not been a requirement in the existing

rule, it has been the practice of the petitioners since the rule was revised in 1995. This is consistent with commission practice of applicants providing sworn applications for emergency orders, as well as affidavits required by law. Finally, §101.2(b) would be reorganized so that all requirements concerning contents of a petition are more easily read.

The proposal would add a new subsection (c) stating that all references to property or properties include all interests in real property, including leasehold interests, to clarify that this condition applies to subsection §101.2(a), as well as to subsection §101.2(b). This is consistent with the proposal to add language requiring that all property owners within the property must consent to the agreement.

The amendments to §101.10, concerning Emissions Inventory Requirements, would clarify and restructure the section. The commission also proposes specific changes to enhance the ability of the staff to compile and quality assure emission inventories. The amendments, which represent current practice of the commission, codify existing statutory authority to develop an emissions inventory (EI) under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.014 and §382.016, to prescribe reasonable requirements to make and maintain records on the measuring and monitoring of emissions. Emission inventories are needed to develop control strategies.

The proposal includes language in §101.10(a) that would allow EI staff to request data related to EI numbers. The staff requires this information periodically so that they may do quality assurance to EI reports. Examples of this type of data are the dimensions of storage tanks, fuel consumption, or other

basic source operational characteristics used to verify emission calculations. The commission is currently requesting and receiving this information on individual sources as required.

The proposed amendment to §101.10(a)(2) would include language that allows the commission to collect data to make a determination if a source would be classified as major under the federal definition. The proposed §101.10(a)(3) would allow the commission to collect data on potential to emit any air contaminant. Emission inventory information is collected under Titles I and V of the FCAA for the purpose of collecting required data to submit to EPA to develop control strategies for SIP and rule development.

The commission requires emission information on all types of sources—point, area, and mobile—to plan effective control strategies for achieving national air quality standards. Considered collectively, small businesses such as gasoline stations, dry cleaners, and other solvent users are significant sources of air emissions and are classified as area sources. Under TCAA, §382.014, the commission may require emission information from persons whose activities cause emissions of air contaminants and, under TCAA, §382.016, may require persons to reasonably make and maintain records on the measuring and monitoring of emissions. The current wording in §101.10 does not specifically extend this data collection authority to area sources, and this proposal would add language to §101.10(a)(4) for this purpose. Many of these small businesses may not have the large technical staff that can devote time to compiling inventories. The commission currently samples these sources through postal surveys which the business operator completes and returns. These samples are used as a representation of similar businesses, and the commission expands the results using population data for an specified geographic

area to compile an inventory for the particular business type. The questions on the survey concern material use, operating hours, and other normal business records. The commission estimates that completing the form could require two to four hours and offers technical aid to business owners in completing the form and will complete the form upon request.

The amendments to §101.10(b)(1) contain requirements for sources in regions that are in violation of a National Ambient Air Quality Standard (NAAQS) to report typical daily emissions of carbon monoxide and ozone precursor gases during the winter and summer months, respectively. This data is used to evaluate individual exceedances of the NAAQS in a limited geographic area and identify sources that may have a stronger influence on air monitoring data. The commission is currently collecting this data and is making this proposal primarily to codify statutory authority into the rules. Evaluation of this data will be used to develop a more effective and equitable control strategy. Section 101.10(b)(1) would also allow the commission to collect data on any other contaminant subject to a NAAQS, HAPs identified in Federal Clean Air Act (FCAA) §112(b), or other contaminants as requested. Finally, this paragraph would clarify that emissions shall be reported as they enter the atmosphere.

The requirement to report allowable emissions would be dropped from §101.10(b)(2), as the commission staff currently enters this data into the records of an account based on the permit. Section 101.10(b)(2)(A) would limit reports on changes of operating conditions of a source to those changes that cause an increase or reduction of five tons per year or 5.0% of total emissions, whichever is greater. The commission proposes this change to eliminate the need to report insignificant changes in emissions.

Section 101.10(c) states that actual measurement of emissions with a continuous emission monitoring system (CEMS) is the preferred method of submitting data. The commission proposes to modify this subsection to require submission of calculations representative of emission producing processes where CEMS data is not available. This data would be used to perform quality assurance and verify the accuracy of the reported emissions. The proposed rulemaking also omits obsolete language that refers to inventory requirements due in 1992 and 1993.

The commission is proposing a new §101.28 to allow compliance with a single set of requirements in federal operating permits where there are multiple, redundant, or contradicting applicable or state-only requirements under 30 TAC Chapter 122, concerning Federal Operating Permits. The commission believes that the authority required for streamlining multiple, duplicative, redundant, and/or contradictory applicable and state-only requirements already exists under §122.148(c)(1)(B) for federal operating permits. However, the new §101.28 would clarify the commission's current authority to streamline requirements for those cases when the SIP may appear to prohibit the use of alternative monitoring and testing requirements to assure compliance with an applicable or state-only requirement.

Federal operating permit sites subject to the multiple, duplicative, redundant, and/or contradictory applicable or state-only requirements (emission limitations, monitoring, recordkeeping, reporting, and/or testing) may request that the commission establish a single set of streamlined and enforceable conditions in the permit. If approved, these streamlined conditions would be covered by a permit shield as allowed by §122.148 of this title (concerning Permit Shield). The permit shield states that

compliance with the streamlined requirements is deemed compliance with the subsumed applicable and state-only requirements.

For example, an applicant with an emission unit subject to two emission limitations for the same pollutant may be required to install separate monitoring instrumentation and submit separate monitoring reports for each, even though one monitor can effectively assure compliance with both emission limitations. Furthermore, the recordkeeping and reporting associated with the unnecessary instrumentation may create an administrative burden for both the facility and the commission without an associated gain in compliance assurance. In this example, the federal operating permit could be used to streamline these requirements into a single set of enforceable permit conditions that would assure compliance with both emission limitations. This action does not make the rules less stringent, but assures that the final requirement is as stringent as or equivalent to those subsumed requirements.

EPA published guidance for streamlining these multiple requirements in EPA White Paper Number 2 (WP2) for Improved Implementation of the Part 70 Operating Permits Program (March 5, 1996). In this paper, EPA encouraged the permitting authorities to allow the use of the federal operating permits to streamline these multiple requirements. EPA stated that the legal basis for establishing a more stringent or equivalent requirement is FCAA, §504(a).

EPA notes that §504(a) does not require a permit to contain repetitious terms and conditions of applicable requirements when another applicable requirement could be used to assure compliance with the streamlined requirement. EPA has recently revised 40 CFR Part 70.6(a)(3)(i)(A) (62 Federal

Register 54900, 54946, October 22, 1997) to reflect this legal interpretation: "...If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing procedures provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining."

While the revised 40 CFR 70 and EPA's interpretation of §504(a) are helpful, EPA recognized that there may be SIP limitations that would prohibit streamlining of multiple requirements. In WP2, EPA notes that streamlining could be limited in instances where an applicable requirement requires specific monitoring or testing requirements to be used as a means of determining compliance. EPA believes that §504(a) overrides such limitations.

In addition, EPA recognized that streamlining cannot result in any requirement relying on a state-only test method or an alternative to an EPA-approved test method unless EPA, or the permitting authority acting as EPA's delegated agency, approves the alternative as an appropriate method for purposes of complying with the streamlined standard. The more stringent, equivalent, or alternative requirement established by the executive director under this section is approved for the emission unit by EPA if it is a term or condition of a federal operating permit and EPA has not objected to the permit as required by §122.350 of this title (concerning EPA Review). The executive director has been delegated authority to issue and reuse federal operating permits under 30 TAC Chapter 122 and stringency determinations will be part of this process.

The commission would include language in §101.28 to accommodate EPA's WP2 guidance and ensure that unnecessary or redundant regulations and processes are eliminated whenever possible.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed amendments to Chapter 101 are in effect, there will be no significant fiscal implications for state government or local governments as a result of administration or enforcement of the proposed amendments. Area EI data from small businesses is currently processed by existing EI staff. Data submitted in accordance with the proposed change to EI will not increase appreciably and are anticipated to be processed using current staff. The commission does not anticipate a need for additional staff to implement new §101.28 at this time. The other proposed changes to Chapter 101 will not require additional staff and are not anticipated to have a significant effect on the commission or units of local government.

PUBLIC BENEFIT

Mr. Orozco also determined that for each of the first five years the proposed changes to Chapter 101 are in effect, the anticipated public benefit as a result of administration of and compliance with the proposed amendments will be the improved organization of the chapter, clarification of definitions, deletion of duplicate definitions, and codification of the authority in the TCAA to collect EI data, to enforce federal air pollution standards, and to clarify to whom various rules apply. There are no new costs associated with this proposal. The amendments to the EI section are codifications of existing statutory authority and are the current practice of the commission.

SMALL BUSINESS ANALYSIS

The commission does not anticipate any negative effect to small business resulting from the change in the definition of “incinerator.” It is anticipated that this change in definition will have a positive effect on small businesses by eliminating the possibility of dual regulation of a single device. The proposed change differentiates the primary intent and design differences of boilers and incinerators with the intent of applying either boiler or incinerator regulations to a particular device and eliminating application of both boiler and incinerator regulations to a single device.

The change to the definition of “nonattainment area” is an administrative change. Any city or area that is reclassified by federal rules as a “nonattainment area” will be addressed separately and specifically.

The change in this rule is definitional only, and therefore has no anticipated fiscal impact on small business.

The exclusion of certain compounds from the definition of “volatile organic compound” removes those compounds from the potential for dual regulation. While some of these compounds may still be regulated as HAPs, their low photochemical reactivity does not justify their regulation as a VOC.

The proposed amendments to §101.2 concern actions that are voluntary by source or property owners.

The combination of sources and properties is not initiated by the commission but by the owners.

Therefore, the amendments will not have an undesired or negative effect on small business.

Small businesses are frequently classified as area sources of air pollution. “Area source” is a term for a group of similar activities that, taken collectively, produce a significant amount of air pollution. Although TCAA, §382.014 and §382.016 provide authority for data collection from area sources, current rules do not include this authority. The proposed EI section includes authority to collect certain data from area sources. To produce an inventory from area sources, the staff typically surveys a representative sample of businesses and then scales the results upward with population data or business employment data to evaluate specific areas. Currently, small business data is collected through a survey form that requests data regarding rates of use of raw materials, hours of operation, and other information that is readily available in typical business records. Small business data is currently collected from Dallas/Ft. Worth, Houston, El Paso, and Beaumont businesses because these four areas do not meet ozone emission standards. The proposed EI section would amend current rules to require that sources, particularly small businesses, submit data that would allow the EI staff to compile data related to measurement of emissions as required by TCAA. The commission currently requests this information from small businesses, chosen from selected source categories, once a year. Less than 1.0% of emission-related businesses are surveyed in a particular area. The proposed rules do not require small businesses to generate new EI data, analyze existing data, or impose new requirements. They do codify the existing broad statutory authority of the commission under TCAA, §382.014. The commission estimates that owners of businesses who are requested to complete a survey form require two to four hours to complete the task. The cost is thought to be minor because only a few small businesses are surveyed once a year and no additional data is required beyond that normally kept in the course of business. At the request of the businesses, the EI staff complete the survey form using information supplied by the business.

The new §101.28, Stringency Determination for Federal Operating Permits, will allow industries subject to multiple applicable requirements and state-only requirements to comply with a single set of requirements. This amendment does not add new regulatory burdens and will allow affected industries to avoid these overlapping requirements.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that this rulemaking is not subject to §2001.0225 because the proposed amendments to this rule do not meet the definition of a “major environmental rule” as defined in the act. Specifically, none of the proposed amendments is anticipated to affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health of the state or a sector of the state.

The amendment of the definition of “incinerator” will allow operators of wood-fired boilers to operate exclusively under regulations concerning boilers. The intent of the amendment is to clarify under which set of regulations a specific device will fall and eliminate the possibility of dual regulation. No new regulatory requirements are proposed.

The exclusion of certain compounds from the definition of “volatile organic compound” removes those compounds from regulation as VOCs. The compounds removed from the definition are still regulated as air contaminants in other rules and are evaluated during the review of operating permits. The deletion of duplicate definitions and the clarification of others such as “new source” or “control device”

do not have any regulatory effect. The new definitions of “flare” and “vapor combustor” do not add any new regulatory requirements.

The proposed amendments to §101.2 concern actions that are voluntary by property owners. The combination of sources and properties is not initiated by the commission but by the owners. The amendments would help clarify the legal responsibility of all parties to a request for single property designation. Because the request for such a designation is voluntary, there are no new expenses compelled by these amendments.

The proposed amendments to §101.10 codify the statutory authority of the commission to develop an EI found in the TCAA. An area source is a group of smaller, similar sources that, taken collectively, becomes a significant source of air emissions. This section is also promulgated under the authority of the TCAA, which authorizes the commission to prescribe reasonable requirements to make and maintain records on the measuring and monitoring of emissions. The section would require selected small businesses to submit the survey forms from which the commission prepares and quality assures an EI. This is current practice with the commission, and the amendments to language previously in this section are primarily an expression and clarification of existing statutory authority, particularly regarding area sources of pollution. Many small businesses would be categorized as an area source. The practice of the commission is to survey a small sample of representative businesses on material use, hours of operation, and other factors affecting emissions and then scale the results upward according to area business employment statistics. The survey should take from two to four hours to compile the information and complete the form. The EI staff will complete the form, on request, using information

supplied by the business. The scale of the effect is small because only 1.0% or less of small businesses are sampled in any year. Therefore, these amendments which are codification of existing authority and practice do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health of the state or a sector of the state.

The new §101.28, concerning Stringency Determination for Federal Operating Permits, allows sources subject to multiple regulatory requirements in their operating permits to request from the executive director a single set of equivalent or more stringent requirements that meet the conditions of the subsumed requirements. This simplification of regulatory requirements is not anticipated to impose a greater degree of stringency except at the permit holder's request.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of the deletion of terms defined elsewhere in the commission rules is to remove duplicate definitions. Additionally, certain definitions, such as "new source" and "control device," are clarified without adding new regulatory requirements. These actions do not burden private real property and do not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of the change in the definition of "incinerator" is to clarify under which set of regulations a specific fuel burning device will fall. The change excludes wood-fired boilers from regulation as incinerators and removes the chance of dual regulation as both boiler and incinerator. No new

regulatory requirements are proposed. This action does not burden private real property and does not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of changing the definition of “nonattainment area” in this amendment is to comply with the current federal definition and classifications of serious nonattainment areas. In this amendment, the definition change of “nonattainment” is an administrative change that has no effect on private real property. Reclassifications of areas as “nonattainment areas” will be addressed by rules and amendments which specifically address those areas. This definition change does not burden private real property and does not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of excluding certain compounds from the definition of “volatile organic compound” is to remove those compounds from redundant regulation as VOCs. The compounds removed from the definitions in this amendment are still regulated as air contaminants in other rules and are evaluated during the review of operating permits. This action does not burden private real property, does not restrict the owner’s right to the property and does not constitute a taking under Texas Government Code, Chapter 2007.

The proposed amendments to §101.2 concern actions that are voluntary by property owners. The combination of sources and properties is not initiated by the commission but by the owners. Therefore, the amendments do not burden private real property, do not restrict the owner’s right to the property and do not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of the proposed amendments to §101.10 is to codify the existing statutory authority in the TCAA to develop an EI. The new section is also promulgated under the authority of the TCAA, which authorizes the commission to prescribe requirements to make and maintain records on the measuring and monitoring of emissions. The commission uses EIs primarily in areas of the state that fail to meet the NAAQS and is a required element of a SIP. SIPs are regulatory tools used by the states at the direction of the federal government to control air emissions in areas that fail to meet the NAAQS. EI data is also collected under the mandate of 40 CFR §51.114, which states that each SIP must “contain a detailed inventory of emissions from point and area sources,” and “identify the sources of the data used in the projection of emissions.” The inventory is used to identify sources of emissions and their relative contribution to total emissions in the area. From this information, the commission develops a control strategy for the most effective application of controls. Because the NAAQS is a standard meant to protect public health, the commission views activities related to attaining or protecting the NAAQS as a public health issue. The EI amendments are codification of the commission’s existing statutory authority under TCAA, §382.014. The actions specified in the amendments are the current practice of the commission, and the amendments do not add any new regulatory requirements. This action does not restrict a right to private, real property and does not meet the definition of a “taking” under Texas Government Code, §2007.002(5).

The purpose of the new §101.28 is to allow sources subject to multiple requirements in their operating permits to request from the executive director a single set of equivalent or more stringent requirements that meet the conditions of the subsumed requirements. This is a simplification of regulatory requirements and will not impose a greater degree of stringency except at the permit holder’s request.

Because a possible greater degree of stringency may be taken only at the initiative of the permit holder, this action does not restrict a right to private real property and does not constitute a taking under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council. The commission has determined that this rulemaking relates to an action or actions subject to the 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 at 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. For the actions in the proposed amendments to 30 TAC Chapter 101, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q) which requires the commission to protect air quality in coastal areas. The commission has determined that the specific actions detailed in previous explanations under the headings "Explanation of Proposed Rules," "Public Benefit," "Small Business Analysis," "Draft Regulatory Impact Analysis," and "Takings Impact Analysis" will not allow any new emissions to the atmosphere.

PUBLIC HEARING

A public hearing on this proposal will be held August 12, 1999, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The

hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99017-101-AI. Comments must be received by 5:00 p.m., August 16, 1999. For further information, please contact Beecher Cameron, of the Regulation Development Section, at (512) 239-1495, or Alan Henderson, of the Regulation Development Section, at (512) 239-1510.

STATUTORY AUTHORITY

The new section and amendments are proposed under the Texas Health and Safety Code, TCAA, §382.011, which establishes the ability of the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.014, which authorizes the commission to require persons whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of air contaminants; §382.016, which authorizes the commission to prescribe reasonable monitoring requirements; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.054, concerning Federal Operating Permits; §382.0541, concerning

Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; §382.0542, concerning Issuance of Federal Operating Permit; Appeal of Delay, which requires the commission to grant a federal operating permit within 18 months of application; §382.061, which authorizes the commission to delegate powers to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

CHAPTER 101

GENERAL AIR QUALITY RULES

§§101.1, 101.2, 101.10, 101.28, 101.30

§101.1. Definitions.

Unless specifically defined in the TCAA [Texas Clean Air Act (TCAA)] or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

[(3) **Act** - The Texas Clean Air Act, the Texas Health and Safety Code, Chapter 382.]

[(4) **Alcohol substitutes (used in offset lithographic printing)** - Nonalcohol additives that contain volatile organic compounds and are used in the fountain solution. Some additives are used to reduce the surface tension of water; others (especially in the newspaper industry) are added to prevent piling (ink buildup).]

[(5) **Alcohol (used in offset lithographic printing)** - For the purposes of complying with §§115.442, 115.443, 115.445, 115.446, and 115.449 of this title (relating to Offset Lithographic Printing), an alcohol is any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12 (which includes methanol, ethanol, propanol, and butanol).]

(3) [(6)] **Ambient air** - That portion of the atmosphere, external to buildings, to which the general public has access.

[(7) **Architectural coating** - Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes. Excluded from this definition are paints sold in containers of one quart or less; paints used on roadways, pavement, swimming pools, and similar surfaces; aerosol spray products; and concentrated color additives.]

[(8) **Article** - When followed by a number, “Article” refers to provisions of the law as codified in Texas Civil Statutes, 1925, as amended.]

[(9) **Automotive basecoat/clearcoat system (used in vehicle refinishing (body shops))** - A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The volatile organic compound (VOC) content of a basecoat (bc)/clearcoat (cc) system shall be calculated according to the following formula:]

$$VOC T_{bc/cc} = \frac{VOC_{bc} + (2 \times VOC_{cc})}{3}$$

where: $VOC T_{bc/cc}$ is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, in the basecoat/clearcoat system;

VOC_{bc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given basecoat; and

VOC_{cc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given clearcoat.

[(10) **Automotive precoat (used in vehicle refinishing (body shops))** - Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.]

[(11) **Automotive pretreatment (used in vehicle refinishing (body shops))** - Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion.]

[(12) **Automotive primer or primer surfacers (used in vehicle refinishing (body shops))** - Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.]

[(13) **Automotive sealers (used in vehicle refinishing (body shops))** - Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.]

[(14) **Automotive specialty coatings (used in vehicle refinishing (body shops))** - Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jambing clear coatings, gloss flatteners, and anti-glare/safety coatings.]

[(15) **Automotive three-stage system (used in vehicle refinishing (body shops))** - A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The volatile organic compound (VOC) content of a three-stage system shall be calculated according to the following formula:]

$$VOC T_{3\text{-stage}} = \frac{VOC_{bc} + VOC_{mc} + (2 \times VOC_{cc})}{4}$$

where: $VOC T_{3\text{-stage}}$ is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, in the three-stage system;

VOC_{bc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given basecoat;

VOC_{mc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given midcoat; and

VOC_{cc} is the VOC content, in pounds of VOC per gallon (less water and exempt solvent) as applied, of any given clearcoat.

[(16) Automotive wipe-down solutions (used in vehicle refinishing (body shops)) -

Any solution used for cleaning and surface preparation.]

(4) [(17)] Background - Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

[(18) Bakery oven - An oven for baking bread or any other yeast-leavened products.]

[(19) Batch (used in offset lithographic printing) - A supply of fountain solution that is prepared and used without alteration until completely used or removed from the printing process.]

[(20) Capture efficiency - The amount of volatile organic compounds (VOC) collected by a capture system which is expressed as a percentage derived from the weight per unit time of VOC

entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC.]

(5) [(21)] **Capture system** - All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(6) [(22)] **Captured facility** - A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(7) [(23)] **Carbon adsorber** - An add-on control device which uses activated carbon to adsorb volatile organic compounds (VOC) from a gas stream.

(8) [(24)] **Carbon adsorption system** - A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

[(25) **Cleaning solution (used in offset lithographic printing)** - Liquids used to remove ink and debris from the operating surfaces of the printing press and its parts.]

[(26) **Clear coat (used in wood parts and products coating)** - A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.]

[(27) **Clear sealers (used in wood parts and products coating)** - Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.]

(9) [(28)] **Coating** - A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

[(29) **Coating application system** - Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters].

[(30) **Coating line** - An operation consisting of a series of one or more coating application systems and including associated flash-off area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.]

(10) [(31)] **Cold solvent cleaning** - A batch process that uses liquid solvent to remove soils from the surfaces of metal parts or to dry the parts by spraying, brushing, flushing, and/or

immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(11) [(32)] **Combustion unit** - Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(12) [(33)] **Commercial hazardous waste management facility** - Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility which disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(13) [(34)] **Commercial incinerator** - An incinerator used to dispose of waste material from retail and wholesale trade establishments. (See incinerator.)

(14) [(35)] **Commercial medical waste incinerator** - A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(15) [(36)] **Component** - A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves, which has the potential to leak VOCs [volatile organic compounds].

(16) [(37)] **Condensate** - Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(17) [(38)] **Construction-demolition waste** - Waste resulting from construction or demolition projects.

[(39)] **Consumer-solvent products** - Products sold or offered for sale by wholesale or retail outlets for individual, commercial, or industrial use which may contain volatile organic compounds, including household products, toiletries, aerosol products, rubbing compounds, windshield washer fluid, polishes and waxes, nonindustrial adhesives, space deodorants, moth control products, or laundry treatments.]

[(40)] **Control device** - Equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.]

[(41)] **Control system** - A combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of air pollutants to the ambient air.]

(18) Control system or control device - Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(19) [(42)] Conveyorized degreasing - A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of metal parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(20) Criteria Pollutant or Standard - Any pollutant for which there is a National Ambient Air Quality Standard established under 40 Code of Federal Regulations (CFR) Part 50.

(21) [(43)] Custody transfer - The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(22) [(44)] De minimis impact - A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.

AIR CONTAMINANT	ANNUAL	24-HOUR	8-HOUR	3-HOUR	1-HOUR
Inhalable Particulate Matter (PM ₁₀)	1.0 µg/m ³	5 µg/m ³			
Sulfur Dioxide	1.0 µg/m ³	5 µg/m ³		25 µg/m ³	
Nitrogen Dioxide	1.0 µg/m ³				
Carbon Monoxide			0.5 mg/m ³		2 mg/m ³

(23) [(45)] **Domestic wastes** - The garbage and rubbish normally resulting from the functions of life within a residence.

[(46)] **Downwind level** - The concentration of air contaminants from a source or sources on a property as measured at or beyond the property boundary.]

[(47)] **Drum** (metal) - Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).]

(24) [(48)] **Emissions banking** - A system for recording emissions reduction credits so they may be used or transferred for future use.

(25) [(49)] **Emissions reduction credit (ERC)** - Any stationary source emissions reduction which has been banked in accordance with §101.29 of this title (relating to Emission Credit [Emissions] Banking and Trading).

(26) [(50)] **Emissions reduction credit certificate** - The certificate issued by the executive director which indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(27) [(51)] **Emissions unit** - Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA [Federal Clean Air Act].

(28) [(52)] **Exempt solvent** - Those carbon compounds or mixtures of carbon compounds used as solvents which have been excluded from the definition of volatile organic compound.

(29) [(53)] **External floating roof** - A cover or roof in an open top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

[(54)] **Extreme performance coating** - A coating intended for exposure to extreme environmental conditions, such as continuous outdoor exposure; temperatures frequently above 95 degrees Celsius (203 degrees Fahrenheit); detergents; abrasive and scouring agents; solvents; and corrosive solutions, chemicals, or atmospheres.]

(30) [(55)] **Federal motor vehicle regulation - Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines, 40 CFR [The Motor Vehicle Air Pollution Standards, 45 Code of Federal Regulations, Subtitle A,] Part 85.**

(31) [(56)] **Federally enforceable** - All limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under [pursuant to] 40 CFR [Code of Federal Regulations] Parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under [pursuant to] 40 CFR [Code of Federal Regulations] §52.21 or under regulations approved pursuant to 40 CFR [Code of Federal Regulations] Part 51, Subpart I, including operating permits issued under the approved [United States Environmental Protection Agency-approved] program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(32) **Flare** - An open combustor without enclosure or shroud which is used as a control device.

[(57) **Final repair coat (used in wood parts and products coating)** - Liquids applied to correct imperfections or damage to the topcoat.]

[(58) **Flexographic printing process** - A method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.]

[(59) **Forage** - Any vegetation which may be consumed by animals.]

[(60) **Fountain solution (used in offset lithographic printing)** - A mixture of water, nonvolatile printing chemicals, and an additive (liquid) that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the nonimage areas so that the ink is maintained within the image areas. Isopropyl alcohol, a volatile organic compound, is the most common additive used to reduce the surface tension of the fountain solution.]

(33) [(61)] **Fuel oil** - Any oil meeting The American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D 396-86, Standard Specifications for Fuel Oils. This includes fuel oil grades 1, 2, 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(34) [(62)] **Fugitive emission** - Any gaseous or particulate contaminant entering the atmosphere which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(35) [(63)] **Garbage** - Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(36) [(64)] **Gasoline** - Any petroleum distillate having a Reid Vapor Pressure (RVP) of four pounds per square inch (27.6 kPa) or greater which is produced for use as a motor fuel and is commonly called gasoline.

[(65) **Gasoline bulk plant** - A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.]

[(66) **Gasoline terminal** - A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period.]

[(67) **Hand-held lawn and garden and utility equipment** - Equipment that requires its full weight to be supported by the operator to perform its function and requires multi-positional operation.]

(37) [(68)] **Hazardous waste management facility** - All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators,

boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(38) [(69)] **Hazardous waste management unit** - A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(39) [(70)] **Hazardous wastes** - Any solid waste identified or listed as a hazardous waste by the administrator of the EPA [United States Environmental Protection Agency (EPA)] under [pursuant to] the federal Solid Waste Disposal Act, as amended by RCRA [the Resource Conservation and Recovery Act], 42 United States Code (USC) 6901 et seq., as amended.

(40) [(71)] **Heatset (used in offset lithographic printing)** - Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(41) [(72)] **High-bake coatings** - Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(42) [(73)] **High-volume low-pressure (HVLP) [HLVP] spray guns** - Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

(43) [(74)] **Incinerator** - An enclosed combustion apparatus and appurtenances thereto which is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and which is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device which burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period shall be considered an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually shall also be considered an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning clean, untreated wood scraps or waste wood as an exclusive fuel for heat recovery are not included under this definition.

(44) [(75)] **Industrial boiler** - A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(45) [(76)] **Industrial furnace** - Cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission [Texas Water Commission] may list.

(46) [(77)] **Industrial solid waste** - Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 [I] industrial solid waste or Class 1 [I] waste is any industrial solid waste designated as Class 1 [I] by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class 1 [I] Waste Determination).

(B) Class 2 [II] industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 [I] or Class 3 [III], as defined in §335.506 of this title (relating to Class 2 [II] Waste Determination).

(C) Class 3 [III] industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 [III] Waste Determination).

[(78) Inorganic fluoride compounds - All inorganic chemicals having an atom or atoms of fluorine in their chemical structure.]

[(47) [(79)] Internal floating cover - A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

[(48) [(80)] Leak - A VOC [volatile organic compound] concentration greater than 10,000 parts per million by volume (ppmv) or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

[(49) [(81)] Liquid fuel - A liquid combustible mixture, not derived from hazardous waste, with a [higher] heating value of at least 5,000 Btu per pound.

[(50) [(82)] Liquid-mounted seal - A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

[(83) Lithography (used in offset lithographic printing) - A printing process where the image and nonimage areas are chemically differentiated; the image area is oil receptive, and the nonimage area is water receptive. This method differs from other printing methods, where the image is a raised or recessed surface.]

[(84) **Low-bake coatings** - Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.]

(51) [(85)] **Maintenance area** - A geographic region of the state previously designated nonattainment under [pursuant to] the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under [the] FCAA, §175A, as amended. The following are the maintenance areas within the state: Victoria Ozone Maintenance Area (60 FR 12453) - Victoria County.

(52) **Maintenance Plan** - a revision to the applicable SIP, meeting the requirements of FCAA, §175A.

(53) [(86)] **Marine vessel** - Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(54) [(87)] **Mechanical shoe seal** - A metal sheet which is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(55) [(88)] **Medical waste** - Waste materials identified by the Texas Department of Health as “special waste from health care-related facilities” and those waste materials commingled and discarded with special waste from health care related facilities.

(56) **Metropolitan Planning Organization (MPO)** - That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC §134 and 49 USC §1607.

(57) [(89)] **Mobile [source] emissions reduction credit (MERC)** - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter E [§114.29] of this title (relating to Low Emission Vehicle Fleet Requirements [Accelerated Vehicle Retirement Program]) or Chapter 114, Subchapter F [§114.11] of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits [Alternative Fuel Requirements for Motor Vehicle Fleets]), and which has been banked in accordance with §101.29 of this title.

(58) [(90)] **Motor vehicle** - A self propelled vehicle designed for transporting persons or property on a street or highway.

(59) [(91)] **Motor vehicle fuel dispensing facility** - Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(60) [(92)] **Municipal solid waste** - Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(61) [(93)] **Municipal solid waste facility** - All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(62) [(94)] **Municipal solid waste landfill** - A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR [Code of Federal Regulations, Part 257,] §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of RCRA [Resource Conservation and Recovery Act (RCRA)] Subtitle D wastes, such as commercial solid waste, non-hazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(63) [(95)] **Municipal solid waste landfill emissions** - Any gas derived from a natural process through the decomposition of organic waste deposited in a municipal solid waste disposal site or from the volatile organic compounds in the waste.

(64) National Ambient Air Quality Standard (NAAQS) - Those standards established under FCAA, §109, including standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), inhalable particulate matter (PM₁₀ and PM_{2.5}), and sulfur dioxide (SO₂).

[**(96) Natural gas/gasoline processing** - A process that extracts condensate, as defined in this section, from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation defined previously: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied natural gas units, and field gas gathering systems.]

(65) [(97)] Net ground-level concentration - The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary. [The upwind level subtracted from the downwind level.]

(66) [(98)] New source - Any stationary source, the construction or modification of which was [is] commenced after March 5, 1972 [the date of adoption of these sections].

(67) [(99)] **Nonattainment area** - A defined region within the state which is designated by EPA as failing to meet the National Ambient Air Quality Standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA [the Federal Clean Air Act], §107(d). For the official list and boundaries of nonattainment areas, see 40 CFR Part 81 [the Code of Federal Regulations (40 CFR Part 81)] and pertinent *Federal Register* notices. The following areas comprise the nonattainment areas within the state:

(A) Carbon monoxide (CO). El Paso (ELP) CO nonattainment area (56 FR 56694) - Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the city of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM₁₀). El Paso (ELP) PM₁₀ nonattainment area (56 FR 56694) - Classified as a Moderate PM₁₀ nonattainment area. Portion of El Paso County which comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. Collin County lead nonattainment area (56 FR 56694) - Portion of Collin County. Eastside: Starting at the intersection of south Fifth Street and the fence line approximately 1,000 feet south of the Gould National Batteries (GNB) property line going north to the intersection of south Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the GNB property line; Southside: Fence line approximately 1,000 feet south of the GNB property line.

(D) Nitrogen Dioxide (NO₂). No designated nonattainment areas.

(E) Ozone.

(i) Houston/Galveston (HGA) ozone nonattainment area (56 FR 56694)
- Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso (ELP) ozone nonattainment area (56 FR 56694) -
Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont/Port Arthur (BPA) ozone nonattainment area (61 FR 14496) - Classified as a Moderate ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas/Fort Worth (DFW) ozone nonattainment area (63 FR 8128)

[(56 FR 56694)] - Classified as a Serious [Moderate] ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Sulfur Dioxide (SO₂). No designated nonattainment areas.

[(100) **Non-flat architectural coating** - Any coating which registers a gloss of 15 or greater on an 85 degree gloss meter or five or greater on a 60 degree gloss meter, and which is identified on the label as gloss, semi-gloss, or eggshell enamel coating.]

[(101) **Non-heatset (used in offset lithographic printing)** - Any operation where the printing inks are set without the use of heat. For the purposes of this rule, ultraviolet-cured and electron beam-cured inks are considered non-heatset.]

(68) [(102)] **Non-reportable upset** - Any upset that is not a reportable upset as defined in this section.

[(103) **Offset lithography** - A printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket), which, in turn, transfers the ink film to the substrate.]

(69) [(104)] **Opacity** - The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

[(105)] **Opaque ground coats and enamels (used in wood parts and products coating)** - Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.]

(70) [(106)] **Open-top vapor degreasing** - A batch solvent cleaning process that is open to the air and which uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.

(71) [(107)] **Outdoor burning** - Any fire or smoke-producing process which is not conducted in a combustion unit.

[(108)] **Packaging rotogravure printing** - Any rotogravure printing upon paper, paper board, metal foil, plastic film, or any other substrate which is, in subsequent operations, formed into packaging products or labels.]

[(109)] **Pail (metal)** - Any cylindrical metal shipping container with a nominal capacity equal to or greater than one gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.]

(72) [(110)] **Particulate matter** - Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(73) [(111)] **Particulate matter emissions** - All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Reference Method 5, as specified at 40 CFR Part 60, Appendix A [of 40 Code of Federal Regulations], modified to include particulate caught by impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51 [of 40 Code of Federal Regulations]; or by a test method specified in an approved SIP [state implementation plan].

(74) [(112)] **Petroleum refinery** - Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(75) [(113)] **PM₁₀** - Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J [of Part 50 of 40 Code of Federal Regulations] and designated in accordance with 40 CFR Part 53 [of 40 Code of Federal Regulations], or by an equivalent method designated with that Part 53.

(76) [(114)] **PM₁₀ emissions** - Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as

measured by an applicable reference method, or an equivalent or alternative method specified in 40 CFR Part 51 [of 40 Code of Federal Regulations], or by a test method specified in an approved SIP [state implementation plan].

(77) [(115)] **Polychlorinated biphenyl compound (PCB)** - A compound subject to 40 CFR [Title 40, Code of Federal Regulations,] Part 761.

[(116)] **Polymer and resin manufacturing process** - A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.]

[(117)] **Population equivalent** - The hypothetical population which would generate an amount of solid waste equivalent to that actually being processed or disposed of based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals.]

[(118)] **Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents)** - Basis for emission limits for surface coating processes. Can be calculated by the following equation:]

$$\text{Pounds of VOC per gallon of coating (minus water and exempt solvents)} = \frac{W_v}{V_m - V_w - V_{es}}$$

Where: W_v = weight of VOC, in pounds, contained in V_m gallons of coating

V_m = volume of coating, generally assumed to be one gallon

V_w = volume of water, in gallons, contained in V_m gallons of coating

V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

[(119) **Pounds of volatile organic compounds (VOC) per gallon of solids** - Basis for emission limits for surface coating processes. Can be calculated by the following equation:]

$$\text{Pounds of VOC per gallon of solids} = \frac{W_v}{V_m - V_v - V_w - V_{es}}$$

Where: W_v = weight of VOC, in pounds, contained in V_m gallons of coating

V_m = volume of coating, generally assumed to be one gallon

V_v = volume of VOC, in gallons, contained in V_m gallons of coating

V_w = volume of water, in gallons, contained in V_m gallons of coating

V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

[(120) **Printing line** - An operation consisting of a series of one or more printing processes and including associated drying areas.]

(78) [(121)] **Process or processes** - Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(79) [(122)] **Process weight per hour** - “Process weight” is the total weight of all materials introduced or recirculated into any specific process which may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The “process weight per hour” will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment used to conduct the process is idle. For continuous operation, the “process weight per hour” will be derived by dividing the total process weight for a 24-hour period by 24.

(80) [(123)] **Property** - All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

[(124)] **Publication rotogravure printing** - Any rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed materials.]

(81) [(125)] **Reasonable further progress (RFP)** - Annual incremental reductions in emissions of the applicable air contaminant which are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the SIP [State Implementation Plan].

(82) [(126)] **Remote reservoir cold solvent cleaning** - Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(83) [(127)] **Reportable quantity (RQ)** - Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures,
either:

(i) the lowest of the quantities:

(I) listed in 40 CFR [Code of Federal Regulations (CFR),]
§302, Table 302.4, the column “final RQ”;

(II) listed in 40 CFR[,] §355, Appendix A, the column
“Reportable Quantity”; or

(III) listed as follows:

(-a-) butane - 5,000 pounds;

(-b-) butenes (except 1,3-butadiene) - 5,000 pounds;

(-c-) ethylene - 5,000 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) isobutylene - 5,000 pounds;

(-f-) pentane - 5,000 pounds;

(-g-) propane - 5,000 pounds;

(-h-) propylene - 5,000 pounds;

(-i-) isobutane - 5,000 pounds; or

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound which equals or exceeds the amount specified in subparagraph (A) of this definition;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this definition is not known, any amount of the mixture which equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this definition;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this definition are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this definition are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas and air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity, an opacity which is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only reportable quantity applicable to boilers or combustion turbines fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight;

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest facility property line:

(i) less than one half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(84) [(128)] **Reportable upset** - Any upset which, in any 24-hour period, results in an unauthorized emission of air contaminants equal to or in excess of the reportable quantity as defined in this section.

[(129) **Rotogravure printing** - The application of words, designs, and/or pictures to any substrate by means of a roll printing technique which involves a recessed image area. The recessed area is loaded with ink and pressed directly to the substrate for image transfer.]

(85) [(130)] **Rubbish** - Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. [;] Combustible [combustible] rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. [;] Noncombustible [noncombustible] rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

[(131) **Semitransparent spray stains and toners (used in wood parts and products coating)** - Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to toners and nongrain-raising stains.]

[(132) **Semitransparent wiping and glazing stains (used in wood parts and products coating)** - Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.]

[(133) **Shellacs (used in wood parts and products coating)** - Clear or pigmented coatings formulated solely with the resinous secretions of the lac beetle (*laccifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.]

(86) [(134)] **Sludge** - Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(87) [(135)] **Smoke** - Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(88) [(136)] **Solid waste** - Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA [United States Environmental Protection Agency] under the federal Solid Waste Disposal Act, as amended by RCRA [the Resource Conservation and Recovery Act], as amended (42 USC [United States Code], 6901 et seq).

(89) [(137)] **Sour crude** - A crude oil which will emit a sour gas when in equilibrium at atmospheric pressure.

(90) [(138)] **Sour gas** - Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(91) [(139)] **Source** - A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(92) [(140)] **Special waste from health care related facilities** - A solid waste which if improperly treated or handled may serve to transmit infectious disease(s) and which is comprised of the

following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(93) [(141)] **Standard conditions** - A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kPa). Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

(94) [(142)] **Standard metropolitan statistical area** - An area consisting of a county or one or more contiguous counties which is officially so designated by the United States Bureau of the Budget.

(95) [(143)] **Submerged fill pipe** - A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 cm) from the bottom or, when applied to a tank which is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(96) [(144)] **Sulfur compounds** - All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(97) [(145)] **Sulfuric acid mist/sulfuric acid** - Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H₂SO₄ and shall include

sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 CFR [Title 40 Code of Federal Regulations,] Part 60, Appendix A.

[(146) **Surface coating processes** - Operations which utilize a coating application system.]

[(A) **Large appliance coating** - The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.]

[(B) **Metal furniture coating** - The coating of metal furniture (tables, chairs, waste baskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.]

[(C) **Coil coating** - The coating of any flat metal sheet or strip supplied in rolls or coils.]

[(D) **Paper coating** - The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).]

[(E) **Fabric coating** - The application of coatings to fabrics, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms).]

[(F) **Vinyl coating** - The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.]

[(G) **Can coating** - The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetable, and others), tennis balls, motor oil, paints, and other mass-produced cans.]

[(H) **Automobile coating** - The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.]

[(I) **Light-duty truck coating** - The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pick-ups, vans, and window vans.]

[(J) **Miscellaneous metal parts and products coating** - The coating of miscellaneous metal parts and products in the following categories:]

[(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);]

[(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);]

[(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);]

[(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);]

[(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);]

[(vi) fabricated metal products (metal-covered doors, frames, etc.); and]

[(vii) any other category of coated metal products, except the specified list in subparagraphs (A)-(I) of this definition, including, but not limited to, those which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).]

[(K) **Factory surface coating of flat-wood paneling** - Coating of flat wood paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tileboard.]

[(L) **Mirror backing coating** - The application of coatings to the silvered surface of a mirror.]

[(M) **Wood parts and products coating** - The coating of wood parts and products, excluding factory surface coating of flat wood paneling.]

(98) [(147)] **Sweet crude oil and gas** - Those crude petroleum hydrocarbons that are not “sour” as defined in this section.

[(148) **Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation** - A SOCMI noncontinuous distillation operation in which a discrete quantity or batch of liquid feed is charged into a distillation unit and distilled at one time. After the initial charging of the liquid feed, no additional liquid is added during the distillation operation.]

[(149) **Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process** - Any SOCMI noncontinuous reactor process which is not characterized by steady-state conditions, and in which reactants are not added and products are not removed simultaneously.]

[(150) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation

operation - A SOCMI operation separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor-phase as they approach equilibrium within the distillation unit.]

[(151) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation

unit - A SOCMI device or vessel in which distillation operations occur, including all associated internals (including, but not limited to, trays and packing), accessories (including, but not limited to, reboilers, condensers, vacuum pumps, and steam jets), and recovery devices (such as absorbers, carbon adsorbers, and condensers) which are capable of, and used for, recovering chemicals for use, reuse, or sale.]

[(152) Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor

process - A SOCMI unit operation in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way, that their molecular structures are altered and one or more new organic compounds are formed.]

[(153) Synthetic organic chemical manufacturing process - A process that produces,

as intermediates or final products, one or more of the chemicals listed in Table II of this section.]

TABLE II.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical
20	Acetal
30	Acetaldehyde
40	Acetaldol
50	Acetamide
65	Acetanilide
70	Acetic acid
80	Acetic anhydride
90	Acetone
100	Acetone cyanohydrin
110	Acetonitrile
120	Acetophenone
125	Acetyl chloride
130	Acetylene
140	Acrolein
150	Acrylamide
160	Acrylic acid and esters
170	Acrylonitrile
180	Adipic acid
185	Adiponitrile
190	Alkyl naphthalenes
200	Allyl alcohol
210	Allyl chloride
220	Aminobenzoic acid
230	Aminoethylethanolamine
235	p-Aminophenol
240	Amyl acetates
250	Amyl alcohols
260	Amyl amine
270	Amyl chloride

OCPDB No.*	Chemical
280	Amyl mercaptans
290	Amyl phenol
300	Aniline
310	Aniline hydrochloride
320	Anisidine
330	Anisole
340	Anthranilic acid
350	Anthraquinone
360	Benzaldehyde
370	Benzamide
380	Benzene
390	Benzenedisulfonic acid
400	Benzenesulfonic acid
410	Benzil
420	Benzilic acid
430	Benzoic acid
440	Benzoin
450	Benzonitrile
460	Benzophenone
480	Benzotrichloride
490	Benzoyl chloride
500	Benzyl alcohol
510	Benzyl amine
520	Benzyl benzoate
530	Benzyl chloride
540	Benzyl dichloride
550	Biphenyl
560	Bisphenol A
570	Bromobenzene
580	Bromonaphthalene
590	Butadiene
592	1-butene
600	n-butyl acetate
630	n-butyl acrylate

OCPDB No.*	Chemical
640	n-butyl alcohol
650	s-butyl alcohol
660	t-butyl alcohol
670	n-butylamine
680	s-butylamine
690	t-butylamine
700	p-tert-butyl benzoic acid
710	1,3-butylene glycol
750	n-butyraldehyde
760	Butyric acid
770	Butyric anhydride
780	Butyronitrile
785	Caprolactam
790	Carbon disulfide
800	Carbon tetrabromide
810	Carbon tetrachloride
820	Cellulose acetate
840	Chloroacetic acid
850	m-chloroaniline
860	o-chloroaniline
870	p-chloroaniline
880	Chlorobenzaldehyde
890	Chlorobenzene
900	Chlorobenzoic acid
905	Chlorobenzotrichloride
910	Chlorobenzoyl chloride
920	Chlorodifluoroethane
921	Chlorodifluoromethane
930	Chloroform
940	Chloronaphthalene
950	o-chloronitrobenzene
951	p-chloronitrobenzene
960	Chlorophenols
964	Chloroprene

OCPDB No.*	Chemical
965	Chlorosulfonic acid
970	m-chlorotoluene
980	o-chlorotoluene
990	p-chlorotoluene
992	Chlorotrifluoromethane
1000	m-cresol
1010	o-cresol
1020	p-cresol
1021	Mixed cresols
1030	Cresylic acid
1040	Crotonaldehyde
1050	Crotonic acid
1060	Cumene
1070	Cumene hydroperoxide
1080	Cyanoacetic acid
1090	Cyanogen chloride
1100	Cyanuric acid
1110	Cyanuric chloride
1120	Cyclohexane
1130	Cyclohexanol
1140	Cyclohexanone
1150	Cyclohexene
1160	Cyclohexylamine
1170	Cyclooctadiene
1180	Decanol
1190	Diacetone alcohol
1200	Diaminobenzoic acid
1210	Dichloroaniline
1215	m-dichlorobenzene
1216	o-dichlorobenzene
1220	p-dichlorobenzene
1221	Dichlorodifluoromethane
1240	Dichloroethyl ether
1244	1,2-dichloroethane (EDC)

OCPDB No.*	Chemical
1250	Dichlorohydrin
1270	Dichloropropene
1280	Dicyclohexylamine
1290	Diethylamine
1300	Diethylene glycol
1304	Diethylene glycol diethyl ether
1305	Diethylene glycol dimethyl ether
1310	Diethylene glycol monobutyl ether
1320	Diethylene glycol monobutyl ether acetate
1330	Diethylene glycol monoethyl ether
1340	Diethylene glycol monoethyl ether acetate
1360	Diethylene glycol monomethyl ether
1420	Diethyl sulfate
1430	Difluoroethane
1440	Diisobutylene
1442	Diisodecyl phthalate
1444	Diisooctyl phthalate
1450	Dikethene
1460	Dimethylamine
1470	N,N-dimethylaniline
1480	N,N-dimethyl ether
1490	N,N-dimethylformamide
1495	Dimethylhydrazine
1500	Dimethyl sulfate
1510	Dimethyl sulfide
1520	Dimethyl sulfoxide
1530	Dimethyl terephthalate
1540	3,5-dinitrobenzoic acid
1545	Dinitrophenol
1550	Dinitrotoluene
1560	Dioxane
1570	Dioxolane
1580	Diphenylamine
1590	Diphenyl oxide

OCPDB No.*	Chemical
1600	Diphenyl thiourea
1610	Dipropylene glycol
1620	Dodecene
1630	Dodecylaniline
1640	Dodecylphenol
1650	Epichlorohydrin
1660	Ethanol
1661	Ethanolamines
1670	Ethyl acetate
1680	Ethyl acetoacetate
1690	Ethyl acrylate
1700	Ethylamine
1710	Ethylbenzene
1720	Ethyl bromide
1730	Ethylcellulose
1740	Ethyl chloride
1750	Ethyl chloroacetate
1760	Ethylcyanoacetate
1770	Ethylene
1780	Ethylene carbonate
1790	Ethylene chlorohydrin
1800	Ethylenediamine
1810	Ethylene dibromide
1830	Ethylene glycol
1840	Ethylene glycol diacetate
1870	Ethylene glycol dimethyl ether
1890	Ethylene glycol monobutyl ether
1900	Ethylene glycol monobutyl ether acetate
1910	Ethylene glycol monoethyl ether
1920	Ethylene glycol monoethyl ether acetate
1930	Ethylene glycol monomethyl ether
1940	Ethylene glycol monomethyl ether acetate
1960	Ethylene glycol monophenyl ether
1970	Ethylene glycol monopropyl ether

OCPDB No.*	Chemical
1980	Ethylene oxide
1990	Ethyl ether
2000	2-ethylhexanol
2010	Ethyl orthoformate
2020	Ethyl oxalate
2030	Ethyl sodium oxalacetate
2040	Formaldehyde
2050	Formamide
2060	Formic acid
2070	Fumaric acid
2073	Furfural
2090	Glycerol (Synthetic)
2091	Glycerol dichlorohydrin
2100	Glycerol triether
2110	Glycine
2120	Glyoxal
2145	Hexachlorobenzene
2150	Hexachloroethane
2160	Hexadecyl alcohol
2165	Hexamethylenediamine
2170	Hexamethylene glycol
2180	Hexamethylenetetramine
2190	Hydrogen cyanide
2200	Hydroquinone
2210	p-hydroxybenzoic acid
2240	Isoamylene
2250	Isobutanol
2260	Isobutyl acetate
2261	Isobutylene
2270	Isobutyraldehyde
2280	Isobutyric acid
2300	Isodecanol
2320	Isooctyl alcohol
2321	Isopentane

OCPDB No.*	Chemical
2330	Isophorone
2340	Isophthalic acid
2350	Isoprene
2360	Isopropanol
2370	Isopropyl acetate
2380	Isopropylamine
2390	Isopropyl chloride
2400	Isopropylphenol
2410	Ketene
2414	Linear alkyl sulfonate
2417	Linear alkylbenzene
2420	Maleic acid
2430	Maleic anhydride
2440	Malic acid
2450	Mesityl oxide
2455	Metanilic acid
2460	Methacrylic acid
2490	Methallyl chloride
2500	Methanol
2510	Methyl acetate
2520	Methyl acetoacetate
2530	Methylamine
2540	n-methylaniline
2545	Methyl bromide
2550	Methyl butynol
2560	Methyl chloride
2570	Methyl cyclohexane
2590	Methyl cyclohexanone
2620	Methylene chloride
2630	Methylene dianiline
2635	Methylene diphenyl diisocyanate
2640	Methyl ethyl ketone
2645	Methyl formate
2650	Methyl isobutyl carbinol

OCPDB No.*	Chemical
2660	Methyl isobutyl ketone
2665	Methyl methacrylate
2670	Methyl pentynol
2690	a-methylstyrene
2700	Morpholine
2710	a-naphthalene sulfonic acid
2720	B-naphthalene sulfonic acid
2730	a-naphthol
2740	B-naphthol
2750	Neopentanoic acid
2756	o-nitroaniline
2757	p-nitroaniline
2760	o-nitroanisole
2762	p-nitroanisole
2770	Nitrobenzene
2780	Nitrobenzoic acid (o, m, and p)
2790	Nitroethane
2791	Nitromethane
2792	Nitrophenol
2795	Nitropropane
2800	Nitrotoluene
2810	Nonene
2820	Nonyl phenol
2830	Octyl phenol
2840	Paraldehyde
2850	Pentaerythritol
2851	n-pentane
2855	l-pentene
2860	Perchloroethylene
2882	Perchloromethyl mercaptan
2890	O-phenetidine
2900	p-phenetidine
2910	Phenol
2920	Phenolsulfonic acids

OCPDB No.*	Chemical
2930	Phenyl anthranilic acid
2940	Phenylenediamine
2950	Phosgene
2960	Phthalic anhydride
2970	Phthalimide
2973	B-picoline
2976	Piperazine
3000	Polybutenes
3010	Polyethylene glycol
3025	Polypropylene glycol
3063	Propionaldehyde
3066	Propionic acid
3070	n-propyl alcohol
3075	Propylamine
3080	Propyl chloride
3090	Propylene
3100	Propylene chlorohydrin
3110	Propylene dichloride
3111	Propylene glycol
3120	Propylene oxide
3130	Pyridine
3140	Quinone
3150	Resorcinol
3160	Resorcylic acid
3170	Salicylic acid
3180	Sodium acetate
3181	Sodium benzoate
3190	Sodium carboxymethyl cellulose
3191	Sodium chloracetate
3200	Sodium formate
3210	Sodium phenate
3220	Sorbic acid
3230	Styrene
3240	Succinic acid

OCPDB No.*	Chemical
3250	Succinonitrile
3251	Sulfanilic acid
3260	Sulfolane
3270	Tannic acid
3280	Terephthalic acid
3290 and 3291	Tetrachloroethanes
3300	Tetrachlorophthalic anhydride
3310	Tetraethyllead
3320	Tetrahydronaphthalene
3330	Tetrahydrophthalic anhydride
3335	Tetramethyllead
3340	Tetramethylenediamine
3341	Tetramethylethylenediamine
3349	Toluene
3350	Toluene-2,4-diamine
3354	Toluene-2,4-diisocyanate
3355	Toluene diisocyanates (mixture)
3360	Toluene sulfonamide
3370	Toluene sulfonic acids
3380	Toluene sulfonyl chloride
3381	Toluidines
3390, 3391, and 3393	Trichlorobenzenes
3395	1,1,1-trichloroethane
3400	1,1,2-trichloroethane
3410	Trichloroethylene
3411	Trichlorofluoromethane
3420	1,2,3-trichloropropane
3430	1,1,2-trichloro-1,2,2-trifluoroethane
3450	Triethylamine

OCPDB No.*	Chemical
3460	Triethylene glycol
3470	Triethylene glycol dimethyl ether
3480	Triisobutylene
3490	Trimethylamine
3500	Urea
3510	Vinyl acetate
3520	Vinyl chloride
3530	Vinylidene chloride
3540	Vinyl toluene
3541	Xylenes (mixed)
3560	o-xylene
3570	p-xylene
3580	Xylenol
3590	Xylidine

*The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by EPA.

[(154) **System or device** - Any article, chemical, machine, equipment, or other contrivance, the use of which may eliminate, reduce, or control the emissions of air contaminants to the atmosphere.]

[(155) **Tank-truck tank** - Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.]

[(156) **Topcoat (used in wood parts and products coating)** - A clear liquid which provides the final protective and aesthetic properties to wood finishes.]

(99) [(157)] **Total suspended particulate** - Particulate matter as measured by the method described in 40 CFR Part 50, Appendix B [of Part 50 of 40 Code of Federal Regulations].

(100) [(158)] **Transfer efficiency** - The amount of coating solids deposited onto the surface or [of] a part of product divided by the total amount of coating solids delivered to the coating application system.

[(159) **Transport vessel** - Any land-based mode of transportation (truck or rail) that is equipped with a storage tank having a capacity greater than 1,000 gallons which is used primarily to transport oil, gasoline, or other volatile organic liquid-bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.]

(101) [(160)] **True partial pressure** - The absolute aggregate partial pressure (pounds per square inch absolute (psia)) [(psia)] of all VOCs [volatile organic compounds] in a gas stream.

(102) [(161)] **True vapor pressure** - The absolute aggregate partial vapor pressure (psia) of all VOCs [volatile organic compounds] at the temperature of storage, handling, or processing.

(103) [(162)] **Unauthorized emission** - An emission of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen which exceeds any air emission limitation in a permit, rule, or order of the commission or as authorized by TCAA [Texas Clean Air Act], §382.0518(g).

(104) [(163)] **Upset** - An unscheduled occurrence or excursion of a process or operation that results in an unauthorized emission of air contaminants.

[(164)] **Upwind level** - The representative concentration of air contaminants flowing onto a property as measured at any point.]

(105) [(165)] **Utility boiler** - A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

[(166)] **Vapor balance system** - A system which provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.]

(106) **Vapor combustor** - A partially enclosed combustion device used to destroy VOCs by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system, which can operate at all times to

control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(107) [(167)] **Vapor-mounted seal** - A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

[(168)] **Vapor recovery system** - Any control system which utilizes vapor collection equipment to route volatile organic compound (VOC) to a control device that reduces VOC emissions.]

[(169)] **Vapor-tight** - Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in the regulations.]

[(170)] **Varnishes (used in wood parts and products coating)** - Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.]

[(171)] **Vehicle refinishing (body shops)** - The repair and recoating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by a commercial operation other than the original manufacturer. The repair and recoating of trailers and construction equipment are not included.]

(108) [(172)] **Vent** - Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(109) [(173)] **Visible emissions** - Particulate or gaseous matter which can be detected by the human eye. The radiant energy from an open flame shall not be considered a visible emission under this definition.

(110) [(174)] **Volatile organic compound** - Any compound of carbon or mixture of carbon compounds excluding methane;[,] ethane;[,] 1,1,1-trichloroethane (methyl chloroform);[,] methylene chloride (dichloromethane);[,] perchloroethylene (tetrachloroethylene);[,] trichlorofluoromethane (CFC-11);[,] dichlorodifluoromethane (CFC-12);[,] chlorodifluoromethane (HCFC-22);[,] trifluoromethane (HFC-23);[,] 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);[,] 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114);[,] chloropentafluoroethane (CFC-115);[,] 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);[,] 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);[,] pentafluoroethane (HFC-125);[,] 1,1,2,2-tetrafluoroethane (HFC-134);[,] 1,1,1,2-tetrafluoroethane (HFC-134a);[,] 1,1-dichloro-1-fluoroethane (HCFC-141b);[,] 1-chloro-1,1-difluoroethane (HCFC-142b);[,] 1,1,1-trifluoroethane (HFC-143a);[,] 1,1-difluoroethane (HFC-152a);[,] parachlorobenzotrifluoride (PCBTF);[,] cyclic, branched, or linear completely methylated siloxanes;[,] acetone;[,] 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);[,] 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);[,] 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);[,] difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-

pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane; 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane; 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane; 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane; methyl acetate; carbon monoxide;[,] carbon dioxide;[,] carbonic acid;[,] metallic carbides or carbonates;[,] ammonium carbonate;[,] and perfluorocarbon compounds which fall into these classes:

(A) cyclic, branched, or linear, completely fluorinated alkanes;

(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(111) [(175)] **VOC [Volatile organic compound] water separator** - Any tank, box, sump, or other container in which any VOC [volatile organic compound], floating on or contained in

water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

[(176) **Wash coat (used in wood parts and products coating)** - A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.]

(112) [(177)] **Waxy, high pour point crude oil** - A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Centigrade) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

§101.2. Multiple Air Contaminant Sources or Properties.

(a) In an area where an additive effect occurs from the accumulation of air contaminants from two or more sources on a single property or from two or more properties, such that the level of air contaminants exceeds the ambient air quality standards established by the commission [Texas Air Control Board], and each source or each property is emitting no more than the allowed limit for an air contaminant for a single source or from a single property, further reduction of emissions from each source or property shall be made as determined by the commission [board].

(b) Two or more property owners, or operators acting on behalf of a property owner, [owners/operators] may petition the commission to have their properties designated a single property

for purposes of demonstrating compliance with commission [TNRCC] regulations and the control of air emissions. [The petition shall be subject to the following criteria.]

(1) The use of this section is intended for:

(A) a property under the control of a single entity that has been or will be divided and placed under the control of separate entities, creating a new property line configuration; or

(B) properties operated or intended to be operated as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity.

(2) The petition shall be subject to the following criteria:

(A) The properties must be contiguous except for intervening roads, railroads, and/or rights-of-way, which are a part of the property. Emission points separated by a public right-of-way cannot be combined into a single property designation.

(B) All property owners, fee interest owners, including leaseholders, within the single property designation boundary must consent to the agreement.

(C) The petition shall include the following information:

(i) a general description of the manner in which the control of emissions and demonstration of compliance with commission regulations will be administered and controlled;

(ii) designation of the party or parties who accept responsibility for off-property impacts;

(iii) the existing account number(s) for each petitioner; and

(iv) a description of how the petitioners meet the requirements of this rule.

(D) The petition shall be accompanied by:

(i) a copy of a sworn written agreement between the property owners who consent to having their properties so designated which must detail the mechanisms of control exercised on both properties;

(ii) a United States Geological Survey map or equivalent indicating:

(I) geographical features such as roads, watercourses, and prominent landmarks;

(II) present land uses in the areas surrounding the area to be included;

(III) the boundaries of the petitioners' properties; and

(IV) the area to be included in the single property designation;

and

(iii) any other information needed by the commission in its review of the petition.

(E) The executive director or commission may place such conditions on the approval of the petition as appropriate to avoid a condition of air pollution or ensure compliance with state and federal regulations.

(F) The executive director may approve a petition for single property designation if:

(i) the petition meets all relevant statutory and administrative criteria;

(ii) the petition does not raise new issues that require the interpretation of commission policy; and

(iii) the public interest counsel does not raise objections.

[(1) The properties must be contiguous except for intervening roads, railroads, and/or rights-of-way, which are a part of the property. Properties separated by a public right-of-way will not be considered contiguous.]

[(2) The use of this section is intended for a property under the control of a single entity that has been or will be divided and placed under the control of separate entities, creating a new property line configuration or for properties operated or intended to be operated as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity.]

[(3) The petition shall describe generally the manner in which the control of emissions and demonstration of compliance with TNRCC regulations will be administered and controlled. The petition shall name the party or parties accepting responsibility for off-property impacts. The petition shall be accompanied by a copy of an executed written agreement between the property holders who consent to having their properties so designated and shall also be accompanied by a United States Geological Survey map or equivalent indicating geographical features such as roads, watercourses, and prominent landmarks, the boundaries of the petitioners' properties, the area to be included in the single property designation, and present land uses in the areas surrounding the area to be included. The written agreement must detail the mechanisms of control exercised on both properties. The commission

may place such conditions on the approval of the petition as it may deem appropriate to avoid a condition of air pollution or ensure compliance with state and federal regulations.]

(c) In this section, the terms “property” or “properties” includes leasehold and fee interests in real property.

§101.10. Emissions Inventory Requirements.

(a) Applicability. The owner or operator of an account or source [the following stationary sources] in the State of Texas or on waters that extend 25 miles from the shoreline meeting one or more of the following conditions shall submit emissions inventories and/or related data as required in subsection (b) of this section to the commission [Texas Natural Resource Conservation Commission (TNRCC)] on forms or other media approved by the commission [TNRCC]:

(1) an account which meets the definition of a major facility/stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or [and] any account [stationary source] in an ozone nonattainment area emitting a minimum of ten tons per year (tpy) [(TPY)] volatile organic compounds (VOC), 25 tpy [TPY] nitrogen oxides (NO_x), or 100 tpy [TPY] or more of any other contaminant subject to national ambient air quality standards (NAAQS) [carbon monoxide (CO)];

(2) any account [stationary source in an attainment area or unclassified area] that emits or has the potential to emit 100 tpy or more of any contaminant [(including VOC) for which a national ambient air quality standard has been issued];

(3) any account which emits or has the potential to emit 10 tons of any single or 25 tons of aggregate [major source of] hazardous air pollutants as defined in FCAA [the Federal Clean Air Act (FCAA)], §112(a)(1);[.]

(4) any minor industrial source, area source, non-road mobile source, or mobile source of emissions subject to special inventories under subsection (b)(3) of this section. For purposes of this section, the term “area source” means a group of similar activities that, taken collectively, produce a significant amount of air pollution.

(b) Types of inventories.

(1) Initial emissions inventory. Accounts, as identified in subsection (a)(1), (2), or (3) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant (HAP) that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂), lead (Pb), particulate matter of less than 10 microns in diameter (PM₁₀), any other contaminant subject to NAAQS, emissions of all HAPs identified in FCAA §112(b), or any other contaminant requested by the commission from individual emission units within an account. For purposes of this section, the term

“actual emission” is the actual rate of emissions of a pollutant from an emissions unit as it enters the atmosphere. The reporting year will be the calendar year or seasonal period as designated by the commission. Reported emission activities must include annual routine emissions; excess emissions occurring during maintenance activities, including start-ups and shutdowns; and emissions resulting from upset conditions. For the ozone nonattainment areas, the inventory shall also include typical weekday emissions that occur during the summer months. For CO nonattainment areas, the inventory shall also include typical weekday emissions that occur during the winter months. Emission calculations must follow methodologies as identified in subsection (c) of this section. [Stationary sources, as identified in subsection (a) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, NO_x, CO, sulfur dioxide (SO₂), lead (Pb), and particulate matter of less than 10 microns in diameter (PM₁₀) from stationary sources and emissions of all hazardous air pollutants identified in the FCAA, §112(b). For purposes of this section, the term "actual emission" is the actual rate of emissions of a pollutant from an emissions unit for the calendar year or seasonal period. Actual emission estimates must also include excess emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime to parallel the documentation of these events in the emissions inventory and must follow emission calculations as identified in subsection (c) of this section. Where there is an enforceable document, such as a permit or agreed order establishing allowable levels, the IEI shall include the allowable emission level as identified in the permit maximum allowable emission rate table or board order.]

(2) Statewide annual emissions inventory update (AEIU). Accounts meeting the applicability requirements during an inventory reporting period [Sources] as identified in subsection (a)(1), (2), or (3) [(a)] of this section [that have submitted an IEI] shall submit an AEIU [annual emissions inventory update (AEIU)] which consists of actual [and allowable] emissions as identified in subsection (b)(1)[(a)(1)] of this section[,] if any of the following criteria are met. If none of the following criteria are met, a letter certifying such shall be submitted instead:

[(A) any source that achieves compliance with any regulation of the state implementation plan at any time within the inventory reporting period;]

[(A) [(B)] any change in operating conditions, including start-ups, permanent shut-downs of individual units, or process changes at the source₂ that results in at least a 5.0% or 5 tpy₂, whichever is greater₂ increase or reduction in total annual emissions of VOC, NO_x, CO, SO₂, Pb, or PM₁₀ from the most recently submitted emissions data; or

[(B) [(C)] a cessation of all production processes and termination of operations at the account [source].

[(3) Ozone nonattainment area inventory. Stationary sources emitting a minimum of 10 tpy of VOC, 25 tpy of NO_x, or 100 tpy of CO shall submit an annual inventory. The inventory shall consist of annual emissions and typical weekday emissions that occur during the summer months.]

[(4) CO nonattainment area inventory. Stationary sources emitting 100 tpy or more of CO shall submit an inventory every three years. The inventory shall consist of annual emissions and typical weekday emissions that occur during the winter months. The first inventory is required for the 1989-1990 winter season.]

(3) [(5)] Special inventories. Upon request by the executive director or a designated representative of the commission [TACB], any person owning or operating a source of air emissions which is or could be affected by any rule or regulation of the commission [TACB] shall file [additional] emissions-related [emissions] data with the commission [TACB] as necessary to develop an inventory of emissions.

(c) Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) is the preferred method of calculating emissions [emission] from a source. If CEMS data is not available, other [Other] means for determining actual emissions may be utilized [if CEMS data is not available] in accordance with detailed instructions of the commission [Emissions Inventory Division of TACB]. Sample calculations representative of the processes in the account must be submitted with the inventory.

(d) (No change.)

(e) Reporting requirements. [The IEI or initial AEIU and the 1992 ozone nonattainment area inventory shall be submitted to TACB no later than March 31, 1993.] The IEI or subsequent

[Subsequent] AEIUs [and ozone nonattainment area inventories] shall contain emissions data from the previous calendar year and shall be due on March 31 of each year or as directed by the commission.

Emissions-related data submitted under a special inventory request made under subsection (b)(3) of this section are due as detailed in the letter of request. [The 1992-1993 CO nonattainment area inventory shall be submitted no later than June 30, 1993, and every three years thereafter.]

(f) (No change.)

§101.28. Stringency Determination for Federal Operating Permits.

(a) Instead of the requirements imposed by an applicable requirement or a state only requirement as defined in §122.10 of this title (relating to General Definitions), a permit holder of a federal operating permit may comply with more stringent or equivalent requirements, provided the requirements:

(1) are established by §122.148(c)(1)(B) of this title (relating to Permit Shield) for streamlining multiple, duplicative, redundant, and/or contradicting applicable requirements or state only requirements; and

(2) are adequate to assure compliance to the same extent as the applicable requirements or state-only requirements being superseded by a more stringent or equivalent requirement.

(b) A determination under subsection (a) of this section may include a method change (i.e., either a change to a commission monitoring or testing procedure which was previously approved by EPA or an alternative to an EPA-approved monitoring or test method) if approved by EPA.

(c) The more stringent, equivalent, or alternative requirement established by the executive director under this section is approved for the emission unit by EPA if:

(1) it is a term or condition of a federal operating permit; and

(2) EPA has not objected to the permit as required by §122.350 of this title (relating to EPA Review).

§101.30. Conformity of General Federal Actions to State Implementation Plans.

(a) Purpose.

(1) The purpose of this rule is to implement FCAA, §176(c) [of the Federal Clean Air Act (FCAA)], as amended (42 United States Code (USC) §7401 et seq.) and regulations under 40 [the] Code of Federal Regulations (CFR)[, 40 CFR,] Part 51, Subpart W, with respect to the conformity of general federal actions with the applicable state implementation plan (SIP). Under those authorities, no department, agency, or instrumentality of the federal government shall engage in; support in any way or provide financial assistance for; license or permit; or approve any activity which does not conform to an

applicable SIP. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such action to the applicable SIP.

(2) Under FCAA, §176(c) and 40 CFR, Part 51, Subpart W, a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with the requirements of this rule before the action is taken, with the exception of federal actions where either:

(A) a NEPA [National Environmental Policy Act (NEPA)] analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(B) (No change.)

(3) (No change.)

(b) Definitions. Unless specifically defined in the TCAA [Texas Clean Air Act (TCAA)] or in the rules of the commission [Texas Natural Resource Conservation Commission (TNRCC or Commission)], the terms used by the commission [Commission] have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Affected federal land manager** - The federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the FCAA (42 USC [United States Code] §7472) that is located within 100 kilometers of the proposed federal action.

(2) - (5) (No change.)

[(6) **Criteria pollutant or standard** - Any pollutant for which there is established a NAAQS in 40 CFR, Part 50.]

(6) [(7)] **Direct emissions** - Those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

(7) [(8)] **Emergency** - A situation where extremely quick action on the part of the federal agencies involved is needed, and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, and civil disturbances such as terrorist acts and military mobilizations.

(8) [(9)] **Emissions budgets** - Those portions of the total allowable emissions defined for a certain date in a revision to the applicable SIP for the purpose of meeting reasonable further progress milestones, attainment demonstrations, or maintenance demonstrations; for any criteria pollutant or its precursors allocated by the applicable implementation to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of actions, to any class of

area sources, or to any subcategory of the emissions inventory. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable SIP.

(9) [(10)] **Emissions offsets, for purposes of subsection (h) of this section -**

Emissions reductions which are quantifiable; consistent with the applicable SIP attainment and reasonable further progress demonstrations; surplus to reductions required by and credited to other applicable SIP provisions; enforceable under both state and federal law; and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under EPA's [the United States Environmental Protection Agency's (EPA)] new source review requirements.

(10) [(11)] **Emissions that a federal agency has a continuing program responsibility**

for - Emissions that are specifically caused by an agency carrying out its authorities, but does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

(11) [(12)] **Federal action** - Any activity engaged in by a department, agency, or

instrumentality of the federal government, or any activity that a department, agency, or instrumentality of the federal government supports in any way; provides financial assistance for; licenses, permits, or approves. Activities related to transportation plans, programs, and projects developed, funded, or

approved under Title 23 USC [United States Code] or the Federal Transit Act (49 USC [United States Code] §1601 et seq.) are not considered to be federal actions under general conformity. Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that required the federal permit, license, or approval.

(12) [(13)] **Federal agency** - A federal department, agency, or instrumentality of the federal government.

(13) [(14)] **Increase the frequency or severity of any existing violation of any standard in any area** - To cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

(14) [(15)] **Indirect emissions** - This term does not have the same meaning as given to an indirect source of emissions under FCAA, §110(a)(5) [of the FCAA], but for general conformity are those emissions of a criteria pollutant or its precursors that:

(A) are caused by the federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(B) the federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:

(i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(ii) emissions related to the activities of employees of contractors or federal employees;

(iii) emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality;

(iv) emissions related to the use of federal facilities under lease or temporary permit;

(v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States;

(15) [(16)] **Local air quality modeling analysis** - An assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested

roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

[(17) **Maintenance area** - Any geographic region of the United States previously designated nonattainment pursuant to the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under the FCAA, §175A.]

[(18) **Maintenance plan** - A revision to the applicable SIP, meeting the requirements of the FCAA, §175A.]

[(19) **Metropolitan Planning Organization (MPO)** - That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code §134 and 49 United States Code §1607.]

(16) [(20)] **Milestone** - Has [has] the meaning given in [the] FCAA, §182(g)(1) and §189(c)(1); [- A milestone consists of] an emissions level and the date on which it is required to be achieved.

[(21) **National Ambient Air Quality Standards (NAAQS)** - Those standards established pursuant to the FCAA, §109 and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone, particulate matter (PM₁₀), and sulfur dioxide (SO₂).]

[(22) **NEPA** - The National Environmental Policy Act of 1969, as amended (42 United States Code §4321 et seq.).]

[(23) **Nonattainment area (NAA)** - Any geographic area of the United States which has been designated as nonattainment under the FCAA, §107 and described in 40 CFR, Part 81.]

(17) [(24)] **Presursors of a criteria pollutant** are:

(A) for ozone, nitrogen oxides (NO_x) (unless an area is exempted from NO_x requirements under [the] FCAA, §182(f) and volatile organic compounds (VOC); and

(B) for particulate matter (PM_{10}) [PM_{10}], those pollutants described in the PM_{10} nonattainment area applicable SIP as significant contributors to the PM_{10} levels.

(18) [(25)] **Reasonably foreseeable emissions** - Projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

(19) [(26)] **Regionally significant action** - A federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

(20) [(27)] **Regional water or wastewater projects** - Projects which include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

(21) [(28)] **Total of direct and indirect emissions** - The sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the “net” emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsection (c)(3), (4), (5), or (6) of this section are not included in the “total of direct and indirect emissions,” except as provided in subsection (c)(10) of this section. The “total of direct and indirect emissions” includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses, when emissions are reasonably foreseeable, is not permitted by this rule.

(c) Applicability.

(1) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC [United States Code] or the Federal Transit Act (49 USC [United States Code] §1601 et seq.) shall meet the procedures and criteria of §114.260 [§114.27] of this title (relating to Transportation Conformity), and the Transportation Conformity SIP, in lieu of the procedures set forth in this rule.

(2) For federal actions not covered by paragraph (1) of this subsection, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in subparagraphs (A) or (B) of this paragraph.

(A) For purposes of paragraph (2) of this subsection, the following rates apply in nonattainment areas [(NAAs)]:

Nonattainment Area	Rate (tons/year)
Ozone (VOC or NO _x)	
Marginal or moderate nonattainment areas inside an ozone transport region	
VOC	50
NO _x	100
Other ozone nonattainment areas outside an ozone transport region	100
Serious nonattainment areas	50
Severe nonattainment areas	25
Extreme nonattainment areas	10
Carbon Monoxide	
All nonattainment areas	100
SO ₂ or NO ₂	
All nonattainment areas	100
PM ₁₀	
Moderate nonattainment areas	100
Serious nonattainment areas	70
Pb	
All nonattainment areas	25

(B) (No change.)

(3) - (7) (No change.)

(8) In addition to meeting the criteria for establishing exemptions set forth in paragraph (7)(A) or (B) of this subsection, the following procedures must also be complied with to presume that activities will conform:

(A) (No change.)

(B) the federal agency shall notify the appropriate EPA Regional Office, the commission [TNRCC], local air quality agencies and, where applicable, the Texas Department of Transportation (TxDOT) and the MPO, and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(C) - (D) (No change.)

(9) - (12) (No change.)

(d) (No change.)

(e) Reporting Requirements

(1) A federal agency making a conformity determination under subsection (h) of this section shall provide to the appropriate EPA Regional Office, the commission [TNRCC], local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO, a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(2) A federal agency shall notify the appropriate EPA Regional Office, the commission [TNRCC], local air quality agencies and, where applicable, affected federal land managers,

TxDOT and the MPO within 30 days after making a final conformity determination under subsection (h) of this section.

(3) As a matter of policy, the state will not make any determination under subsection (h)(1)(E)(i)(I) of this section or any commitment under subsection (h)(1)(E)(i)(II) of this section, unless the federal agency provides to the commission [TNRCC] information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, whether such project or action is determined to be subject to this rule under subsection (c) of this section. As a matter of policy, the emissions budget that would otherwise be available for projects of any federal agency under subsection (h) of this section shall be reduced by 50% (or other percentage as the state determines) in the case of any federal agency that does not provide to the commission [TNRCC] information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, regardless of whether such project or action is determined to be subject to this rule under subsection (c) of this section.

(f) - (g) (No change.)

(h) Criteria for Conformity Determination of General Federal Actions.

(1) An action required under subsection (c) of this section to have a conformity determination for a specific pollutant will be determined to conform to the applicable plan if, for each pollutant that exceeds the rates of subsection (c)(2) of this section, or otherwise requires a conformity

determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3) of this subsection, and meets any of the following requirements:

(A) - (C) (No change.)

(D) for CO or PM₁₀:

(i) where the commission [TNRCC] determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on local air quality modeling analysis;
or

(ii) where the commission [TNRCC] determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is appropriate, and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on areawide modeling, or meet the requirements of paragraph (1)(E) of this subsection;

(E) for ozone or nitrogen dioxide, and for purposes of paragraphs (1)(C)(ii) and (1)(D)(ii) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(i) where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990, and the state makes a determination as provided in subclause (I) of this clause, or where the state makes a commitment as provided in subclause (II) of this clause. Any such determination or commitment shall be made in compliance with subsections (e) and (f) of this section.

(I) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by the commission [TNRCC] to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable SIP.

(II) The total of direct and indirect emissions from the action, or portion thereof, is determined by the commission [TNRCC] to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budget specified in the applicable SIP and the commission [TNRCC] makes a written commitment to EPA which includes the following:

(-a-) - (-c-) (No change.)

(-d-) a determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action. As a matter of commission [TNRCC] policy, a commitment will be made only if the commission [TNRCC] determines that the project sponsors and responsible federal agencies have sought all available emissions offsets and made all reasonably available modifications of the action to reduce emissions; and

(-e-) (No change.)

(III) (No change.)

(ii) the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under §114.260 [§114.27] of this title (relating to Transportation Conformity), or the Transportation Conformity SIP, or 40 CFR[,] Part 93, Subpart A;

(iii) - (v) (No change.)

(2) - (4) (No change.)

(i) - (k) (No change.)