

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to §116.10, General Definitions; §116.110, Applicability; §116.116, Changes to Facilities; §116.603, Public Participation in Issuance of Standard Permits; §116.620, Installation and/or Modification of Oil and Gas Facilities; §116.621, Municipal Solid Waste Landfills; §116.710, Applicability; §116.715, General and Special Conditions; §116.721; Amendments and Alterations; §116.722, Distance Limitations; §116.750, Flexible Permit Fee; and *new* §116.119, De Minimis Facilities or Sources; §116.1010, Applicability; §116.1011, Multiple Plant Permit Application; §116.1014, Application Review Schedule; §116.1015, General and Special Conditions; §116.1020, Modifications; §116.1021, Amendments and Alterations; §116.1040, Multiple Plant Permit Public Notice; §116.1041, Multiple Plant Permit Public Comment Procedures; §116.1050, Multiple Plant Permit Application Fee; §116.1060, Multiple Plant Permit Renewal; and §116.1070, Delegation. Sections 116.10, 116.110, 116.116, 116.603, 116.620, 116.621, 116.710, 116.715, 116.722, and 116.750 are proposed as revisions to the state implementation plan. Adopted *with changes* to the proposed text as published in the April 7, 2000 issue of the *Texas Register* are §§116.10, 116.119, 116.620, 116.621, 116.1010, 116.1011, 116.1014. Sections 116.110, 116.116, 116.603, 116.710, 116.715, 116.721, 116.722, 116.750, 116.1015, 116.1020, 116.1021, 116.1040, 116.1041, 116.1050, 116.1060, and 116.1070 are adopted *without changes* and will not be published.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASE FOR THE ADOPTED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the new source review authorizations under the Texas Clean Air Act (TCAA) and created the new program for

the voluntary permitting of grandfathered facilities. Prior to the revisions by SB 766, the TCAA authorized the commission to issue permits for the construction or modification of facilities that will emit air contaminants; standard permits adopted by rule; and exemptions from permitting, also adopted by rule. Senate Bill 766 modified this structure by authorizing the commission to issue standard permits using a process that does not require each standard permit to be in a rule. Senate Bill 766 provided a new name, permits by rule, for authorizations of certain types of facilities which would not make a significant contribution of air contaminants to the atmosphere. Finally, the commission was authorized to develop criteria for facilities that emit a de minimis amount of air contaminants that do not need preconstruction authorization. Within the category of permits, SB 766 created two new permitting options: the voluntary emission reduction permit (VERP) program for permitting of grandfathered facilities, and the multiple plant permit (MPP). Senate Bill 766 also amended TCAA, §382.0621(d) to require the increase of emission fees for the largest grandfathered facilities which do not have a permit application pending on or after September 1, 2001.

The commission is implementing this legislation in two phases. The first phase of the implementation of SB 766 was adopted by the commission on December 16, 1999. Included in the first phase were the VERP program and the new standard permit issuance procedures.

This adoption implements the elements of SB 766 relating to MPPs and de minimis criteria, and administrative revisions relating to exemptions from permitting and permits by rule. This adoption also corrects several typographical errors and incorrect references. Other elements of SB 766, including

exemptions from permitting, permits by rule, and emission fees are being addressed in concurrent adoptions for new and amended sections in 30 TAC Chapter 101 and Chapter 106. Texas Clean Air Act, §382.051(b)(6) allows the commission to issue an MPP for existing facilities at multiple locations subject to TCAA, §382.0518, Preconstruction Permit, or §382.0519, Voluntary Emissions Reduction Permit. TCAA, §382.05194, Multiple Plant Permit, provides for an MPP, which is a single permit for multiple plant sites that are owned or operated by the same person, if certain emission limits and public participation criteria are met. Texas Clean Air Act, §382.05101, De Minimis Air Contaminants, allows the commission to develop, by rule, the criteria for establishing a de minimis level of air contaminants for facilities or groups of facilities below which a permit under TCAA, §382.0518 or §382.0519, a standard permit under TCAA, §382.05195, or a Permit by Rule under TCAA, §382.05196 is not required. Essentially, the commission may establish a level of emissions of air contaminants for certain facilities or sources below which no preconstruction authorization is needed.

#### SECTION BY SECTION DISCUSSION

The adopted changes to §116.10 modify existing definitions to reflect the recategorized air quality preconstruction permitting structure of the commission and make nonsubstantive corrections. Section 116.10(2), the definition of “Allowable emissions” is amended to reflect the new permits by rule, to clarify that §116.10(2)(C) pertains to “qualified” grandfathered facilities, and to reflect the current nomenclature for standard permit registration. Section 116.10(5), the definition of “Federally enforceable” is amended to include permit requirements under Subchapter C of Chapter 116 (Sources of Hazardous Air Pollutants), which was inadvertently excluded in an earlier rulemaking. Section

116.10(9), the definition of “Modification of existing facility” is amended to reflect TCAA, §382.003(9) by including reference to the new MPP.

The adopted changes to §116.110 include references to the new permits by rule and the new criteria for de minimis facilities or sources as mechanisms under which construction or modification of a facility can occur and remove the redundant reference to “an existing flexible permit” in §116.110(b). The amendments also add the new permit by rule to the existing prohibition on the use of Chapter 106 authorizations for construction or modification of affected sources under Subchapter C of this chapter, Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63).

Amendments to §116.116(c)(4) and (5) correct a reference to a section which no longer exists. The correct reference is to §116.111(a)(2)(C), which discusses best available control technology.

Amendments to §116.116(d) include the necessary references to the new permits by rule under Chapter 106, and rearranges some wording for consistency.

The new §116.119 establishes the criteria under which a facility would be considered de minimis and thus would not need a preconstruction authorization. The location of de minimis facilities may vary from small sites to large petrochemical facilities. The commission considers de minimis to refer to very small additions to background concentrations of air contaminants which cause no discernable or unacceptable impact to public health and for which permitting would be an ineffective use of

commission resources. There are four options for a facility or source to be considered de minimis. First, the commission will maintain a list of categories of facilities and sources that are considered de minimis. The list will not be incorporated into the rule, but will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin with copies in each of the commission's regional offices and on the commission's home page on the World Wide Web. The List of De Minimis Facilities or Sources is available on the commission's web page, and the commission will consider the criteria listed in the rule for amendment of the list. Any person may petition the executive director to amend the list, and the executive director will consider the following when amending the list to ensure that facilities or sources included on the list are de minimis: typical operating scenarios, typical design and location, types and rates of air contaminants emitted, engineering judgement and experience, and toxicological or health impacts. A 30-day public comment period will be provided to take comments on the proposed amendment to the list. The executive director will provide a copy of the response to comments to any commenter and publish the response on the commission's home page on the World Wide Web. If a category of facilities, sources, or groups of facilities or sources is deleted from the list, the owner or operator will have 180 days from the date of publication of the amended list on the commission's home page on the World Wide Web to obtain, register, or apply for authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule). Second, facilities or sources which use no more than prescribed amounts of the following materials at a site are considered de minimis: cleaning and stripping solvents, coatings, dyes, bleaches, fragrances, and water-based surfactants or detergents. The amounts and materials in the rule were determined by input from the commission's regional offices and by engineering and toxicological review. These reviews include, in

some cases, air dispersion modeling compared with the commission's effects screening levels (ESLs) using typical design, location, and emission rates of facilities or sources using the materials. Third, de minimis facilities include those that are located inside a building and meet established emission rate caps, without the use of a control device, for individual and multiple substances. ESLs are substance-specific guideline comparison values used to determine whether measured air concentrations would be expected to result in adverse health or welfare effects. The emission rate caps are based on ESLs compared with off-property impacts using air dispersion modeling of a very small site. Finally, an individual facility or source, or groups of facilities or sources, could also be determined by the executive director, on a case-by-case basis, to be de minimis considering: proximity to receptors, emission rates, engineering judgement and experience, and determination that no adverse toxicological effects would occur off-property. De minimis facilities or sources that are subsequently determined by the executive director to be in violation of any commission rule, permit, order, or statute would no longer be considered de minimis and would be required to obtain authorization under this chapter or under Chapter 106, Permits by Rule.

The amendment to §116.603 corrects a reference to §39.411, Text of Public Notice, to the correct rule, §122.506, Public Notice for General Operating Permits. The reference to the public notice procedures, for general operating permits, Chapter 39, does not reduce the amount of notice but merely clarifies the notice process to be used.

The amendments to §116.620 and §116.621 reflect the new permits by rule and the revised title of Chapter 106.

The amendment to §116.710 corrects an incorrect reference. The correct reference is to §116.110(d), which discusses change in ownership.

Amendments to §§116.715, 116.721, and 116.750 reflect the new permits by rule and the revised title of Chapter 106.

The amendment to §116.722 corrects an incorrect reference. The correct reference is to §116.112, which discusses distance limitations.

New §116.1010 contains conditions defining applicability for facilities eligible for an MPP. Texas Clean Air Act, §382.051(b)(6) allows the commission to issue an MPP for existing facilities at multiple locations subject to TCAA, §382.0518, Preconstruction Permit, or §382.0519, Voluntary Emissions Reduction Permit. Texas Clean Air Act, §382.05194, Multiple Plant Permit, provides for an MPP which is a single permit for multiple plant sites that are owned or operated by the same person, if certain emission limits and public participation criteria are met. Consequently, to be eligible for consolidation under an MPP, the plant sites to be permitted must be owned or operated by the same person or persons under common control.

The aggregate rate of emission of air contaminants cannot exceed the total authorized in existing permits and the rate that would be authorized under any VERPs. There must also be no indication that emissions from the facilities will contravene the intent of the TCAA, including protection of the public's health and property. The MPP may not authorize emissions from any facility that would exceed that facility's highest historic annual rate, if the facility is grandfathered, or levels authorized in the most recent permit, if the facility is permitted. Consistent with commission practice, the highest historic rate will be determined one of two ways: 1) use of data that shows the maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971 for 12 consecutive months, including any increases authorized by a permit by rule; or 2) best engineering judgement in the absence of records, i.e., use of data related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc.) as appropriate, which are selected by the applicant and agreed upon by the executive director, to reasonably approximate the actual annual emission rate from any operational year. The executive director will use the emission rate data to establish emission rate limitations for each facility, the sum of which would not exceed the aggregate rate of emissions of air contaminants allowed under the MPP. This would be consistent with the commission's belief that the MPP would provide a flexible mechanism for permitting grandfathered facilities at multiple sites. Applicants will have the flexibility to over-control facilities at sites where the installation of controls is the most cost-effective. Once the rates are established in an MPP, permit holders would be required to amend or alter the permit, as appropriate, to move emissions from facility to facility or site to site.

Emission control equipment may not be removed except to maintain or upgrade existing controls or to reduce the impact of emissions. Applications for an MPP should be submitted on a Form PI-1M, Multiple Plant Permit Application.

New §116.1011 implements the requirement in TCAA, §382.05194(g) that the commission establish, by rule, the procedures for application and approval for the use of an MPP. Applications will have to include information to demonstrate that applicable conditions of §116.711, Flexible Permit Application, are met. This demonstration will ensure that any applicable federal requirements are complied with and that information is available to determine what type of monitoring or recordkeeping would be required. For grandfathered facilities that would be included in an MPP which is applied for prior to September 1, 2001, the applicant will be required to submit the information required for a VERP application under §116.811(3), Voluntary Emission Reduction Permit Application, solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the permit.. For existing permitted facilities, applicants will need to provide a copy of the relevant permit. In addition, the commission requires information, as necessary, to verify that emissions of air contaminants from each facility would not adversely impact the public's health and physical property. Since the aggregate emission rate under an MPP will be determined by the sum of existing permitted emission rates and VERP emission rates, applications for grandfathered facilities filed after September 1, 2001 would need authorization under Subchapter B of this chapter prior to being included in an MPP. Finally, the applicant would be required to submit information necessary to calculate the cost of public notice under §116.1140, Multiple Plant Permit Public Notice, in order to determine the appropriate application fee

under §116.1050, Multiple Plant Permit Application Fee.

New §116.1014 requires the commission to review MPP applications in accordance with §116.114, Application Review Schedule.

New §116.1015 allows for the inclusion of general and special conditions in MPPs and requires permit holders to comply with those general and special conditions, including special conditions which provide emission limitations for each facility and which specify the aggregate rate of emissions of air contaminants. Permit holders are also required to comply with any applicable conditions contained in §116.115, General and Special Conditions.

Texas Clean Air Act, §382.05194 contains no provisions for modification of facilities under a MPP, as “modification of existing facilities” is defined in §116.10(9), General Definitions. Therefore, new §116.1020 requires authorization under Subchapter B of this chapter before work is begun on the construction of the modification of any facility permitted under an MPP.

New §116.1021 provides a mechanism to amend MPPs as necessary to include revised general and special conditions that reflect changes that are modifications, changes in the method of control of emissions, or changes which will result in an increase in emissions. Permittees will submit a Form PI-1 to request an amendment, which would be subject to the review procedures referenced in §116.116(b), Changes to Facilities. An MPP alteration will be allowed in lieu of amendment for those changes

which do not require an MPP amendment. Alterations which involve changes of a general or special condition, or affect control equipment performance requires prior commission approval. For alterations due to other changes, the executive director would be notified within ten days of the change, unless a different time frame is specified in the MPP. Any alteration request or notification should include information necessary to demonstrate that the change does not interfere with protection of the public's health and physical property. Changes to a facility which meet an authorization under Chapter 106 do not require amendment or alteration of an MPP, as long as the aggregate emissions cap or an individual emission limitation would not be exceeded.

To implement the requirements of TCAA, §382.05194(d), new §116.1040 requires the commission to publish notice of a proposed MPP in a newspaper of general circulation in the area(s) to be affected and in the *Texas Register*. If the MPP will have statewide effect, the notice will be published in the daily newspaper of largest circulation in Dallas and Houston. The notice will include relevant information required by §39.411, Text of Public Notice, and will be published at least 30 days before the commission issues the MPP. Applicants must publish notice of a proposed multiple plant permit amendment consistent with §116.116(b)(4), Changes to Facilities, as multiple plant permit amendments would be reviewed under the existing procedures for permit amendments.

Texas Clean Air Act, §382.05194(e) requires the commission to hold a public meeting regarding proposed MPPs. Under new §116.1041, the commission will hold a public meeting on the proposed MPP with notice of the meeting provided in the same notice required under §116.1040 at least 30 days before the meeting. Consistent with TCAA, §382.05194(f), the commission would respond to public comment received related to the issuance of the MPP at the same time the commission issues or denies the MPP. The response would be made available to the public and each commenter will be mailed a response. Finally, consistent with TCAA, §382.05194(h), the new section also states that applications for an MPP, amendments to an MPP, or revocation of an MPP which are filed before September 1, 2001 are not subject to Texas Government Code, Chapter 2001, meaning no contested case hearing would be allowed.

New §116.1050 requires a fee of \$450 plus the estimated public notice cost for the permit for an application for an MPP. Texas Clean Air Act, §382.062(b) allows the commission to charge and collect a fee for MPPs. This fee would be applied toward recovering the cost of reviewing the MPP applications and the cost of publishing notice.

New §116.1060 requires MPPs to be renewed consistent with Subchapter D of this chapter.

Consistent with TCAA, §382.05194(i), new §116.1070 allows the commission to delegate to the executive director any authority regarding MPPs.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments provide additional permitting options and remove the need for authorizations for de minimis facilities or sources. The MPP and de minimis options in the adopted amendments are voluntary and the amendments do not authorize any new emissions that will have an adverse effect on the environment. In addition, the amendments do not impose any additional regulatory requirements beyond those that currently exist. The new sections and amendments do not meet the definition of “major environmental rule” because there is no adverse material effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of the four applicability requirements of a “major environmental rule.” Specifically, the new sections and amendments do not exceed a standard set by state or federal law, but are proposed under the Texas Health and Safety Code, concerning De Minimis Air Contaminants; and Multiple Plant Permits. The adopted amendments do not exceed a requirement of a delegation agreement and were not developed solely under the general powers of the agency, but were specifically developed to implement the provisions of SB 766.

#### 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 rules expand permitting and authorization options for new and existing facilities. The rules do not restrict or limit an owner’s right to property that would otherwise exist in the absence of governmental action and therefore do not constitute a takings.

The amendments concerning de minimis criteria, establish parameters for emissions, below which, a facility or site would be considered de minimis and thus not required to obtain preconstruction authorization. The new procedures for obtaining an MPP provide an additional option for permitting of grandfathered facilities. The corrections cross-references and the insertion of the new term “permits by rule” are administrative in nature. These actions are reasonably taken to fulfill an obligation mandated under state law.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), and 31 TAC §505.11(b)(2) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the new sections relating to de minimis, multiple plant permits, and permits by rule, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This action does not authorize any new emissions. This action is consistent with Title 40 Code of Federal Regulations (CFR) because it does not authorize an emission rate in excess of that specified by federal requirements.

#### HEARING AND COMMENTERS

The commission held a public hearing on the proposal in Austin on May 4, 2000 and received eight comments during the public comment period which closed on May 8, 2000. The commission received comments from an individual, the United States Environmental Protection Agency (EPA), the Texas Compliance Advisory Panel (CAP), ExxonMobil Refining and Supply (ExxonMobil), the Society of the

Plastics Industry, Inc. (SPI), the Association of Texas Intrastate Natural Gas Pipelines (ATINGP), the Texas Oil and Gas Association (TxOGA), Brown McCarroll & Oaks Hartline, L.L.P. (BMOH), and Baker Botts, L.L.P. on behalf of the Texas Industry Project (TIP). All commenters opposed specific parts of the proposal.

#### ANALYSIS OF TESTIMONY

United States Environmental Protection Agency (EPA) asked if Chapter 321, Subchapter K, Concentrated Animal Feeding Operations, which is referred to in §116.110(a)(2)(B), is part of the Texas SIP and if not, does Texas intend to submit it as a SIP revision. United States Environmental Protection Agency also requested that the commission complete the Subpart I checklist for Chapter 321, Subchapter K to document that sources subject to that chapter meet the provisions of 40 CFR Part 51, Subpart I.

**Throughout its comments on the revisions to Chapter 116, EPA asked the commission to analyze the adopted rules to determine how specific sections of these rules meet the provisions of 40 CFR Part 51, Subpart I. The only sections that were submitted as a SIP revision were §§116.10, 116.110, 116.116, 116.603, 116.620, 116.621, 116.710, 116.715, 116.722, and 116.750. The sections concerning de minimis facilities and sources and multiple plant permits were not submitted as a SIP revision. Because of the ongoing concern with minor new source review authorizations being incorporated into operating permits as applicable requirements and the lack of finality of 40 CFR Part 70, the commission is not prepared to submit the provisions of Chapter**

**116 for de minimis facilities and sources and multiple plant permits as a SIP revision at this time.**

**It is thus premature to determine how 40 CFR Part 51, Subpart I might apply to these sections.**

**If and when these sections are submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I.**

**Chapter 321, Subchapter K has not been submitted as a SIP revision because the rule has been replaced by Chapter 321, Subchapter B. The commission is not prepared to submit Chapter 321, Subchapter B as a SIP revision at this time. It is thus premature to determine how 40 CFR Part 51, Subpart I might apply to Chapter 321, Subchapter B. If and when Chapter 321, Subchapter B is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. The commission will continue to work with the EPA to address any specific concerns regarding Chapter 321, Subchapter B.**

An individual expressed opposition to a listing of de minimis facilities or sources and suggested that all facilities can be listed under permits by rule. There is no need for a de minimis list to subsidize large corporations with grandfathered facilities.

**The rule has not been revised in response to this comment. Texas Clean Air Act, §382.05101 provides that the commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which a permit under §382.0518 or §382.0519, a standard permit under §382.05195, or a permit by rule under §382.05196 is not**

**required. This new section of the TCAA recognizes for the first time that some facilities are, in fact, so small that they do not need to be authorized under the preconstruction permitting authority of the commission, including standard permits and permits by rule. The commission considers de minimis to refer to very small additions to background concentrations of air contaminants which cause no discernable or unacceptable impact to public health and for which permitting and creation of permits by rule would be an ineffective use of commission resources. Some facilities, such as water heaters, are de minimis even if located at large corporations.**

Compliance Advisory Panel commented that the de minimis policy will benefit small businesses by providing clarity regarding requirements for air authorizations. Compliance Advisory Panel expressed support for the use of a list of de minimis facilities and suggested expanding the list to include small, fully enclosed solvent recycling units. The inclusion of these recycling units is consistent with the commission's intent to encourage recycling, which results in lower air emissions. If included, it may be appropriate to specify operating characteristics such as capacity (i.e., no more than five gallons) or source of the solvents (i.e., normal operations of on-site processes). In order to actually encourage recycling, the requirements for demonstrating de minimis status must remain simple and clear so if complicated testing or recordkeeping is required, the incentive effect will be undermined.

**The commission will work with the CAP following this adoption to determine the appropriateness of adding small, fully enclosed recycling units to the list of de minimis facilities.**

United States Environmental Protection Agency requested the commission to complete a Subpart I checklist for §116.119, De Minimis Facilities or Sources, to demonstrate that this section satisfies the provisions of 40 CFR Part 51, Subpart I.

**The referenced checklist appears to be a useful tool for the EPA to verify that proposed SIP revisions meet the requirements of 40 CFR Part 51, Subpart I. For the reasons stated previously, the commission is not submitting the revisions to §116.119 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part 51, Subpart I might apply to §116.119. If and when §116.119 is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. Even though the commission has not responded to this request for information as part of this analysis of testimony, the commission will work with the EPA to address any specific concerns regarding §116.119.**

United States Environmental Protection Agency asked the commission to demonstrate that facilities which qualify as de minimis under §116.119(a) meet 40 CFR §51.160(a) and (e).

**For the reasons stated previously, the commission is not submitting the new §116.119(a) as a SIP revision at this time, thus it is premature to determine how 40 CFR Part 51, Subpart I might**

**apply to §116.119(a). If and when §116.119(a) is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. The commission will continue to work with the EPA to address any specific concerns regarding §116.119(a).**

United States Environmental Protection Agency had the following questions concerning §116.119(c), which refers to the "List of De Minimis Facilities or Sources." What procedures will the commission follow to ensure that the sources on the list meet the requirements of 40 CFR Part 51, Subpart I? How will this be documented? The EPA asked whether these procedures should be incorporated into the SIP.

**For the reasons stated previously, the commission is not submitting the new §116.119(c) as a SIP revision at this time. It is thus premature to determine how 40 CFR Part 51, Subpart I might apply to §116.119(c). If and when §116.119(c) is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. The commission will continue to work with the EPA to address any specific concerns regarding §116.119(c).**

United States Environmental Protection Agency asked whether the list and revisions to the list will be subject to public hearings and if not, asked how this satisfies 40 CFR §51.102, Public Hearings.

**The opportunity for a public hearing is not being provided for the list or revisions to the list; however, the public comment procedures for revisions to the list are described in the adopted rule. The list will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin, with copies maintained in the commission's regional offices, and on the commission's home page on the World Wide Web. Persons may petition the executive director to amend the "List of De Minimis Facilities or Sources" or the executive director may amend the list as necessary. In response to a comment, the commission has revised the rule to require notice of petitions to amend the list on the commission's home page on the World Wide Web. A 30-day public comment period will be provided to take comments on the proposed amendment to the list. The executive director will provide a copy of the response to comments to any commenter and publish the response on the commission's home page on the World Wide Web. The commission is not submitting the list as a SIP revision at this time; therefore, it is premature to determine how 40 CFR §51.102 might apply.**

United States Environmental Protection Agency asked if the list and any revisions to the list will be submitted as a SIP revision and if not, asked the commission to explain how this satisfies 40 CFR §51.103, Submission of plans, preliminary review of plans.

**For the reasons stated previously, the commission is not submitting the list as a SIP revision at this time; therefore, it is premature to determine how 40 CFR §51.103 might apply.**

Brown McCarroll & Oaks Hartline objected to the use of the term “source” in reference to permitting requirements throughout the preamble to the proposed de minimis rule, noting that the commission has no jurisdiction to require preconstruction permitting of sources.

**The commission agrees that new or modified “facilities” are required to obtain preconstruction permits. A facility is defined as “a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source ....” A source is defined as “a point of origin of air contaminants ....” In order to eliminate confusion regarding sources contained in facilities, and since the de minimis criteria do not impose, but rather clarify that the requirement for preconstruction authorization does not apply, the commission chose to err on the side of inclusiveness. This should in no way infer that the commission believes that it has the authority to permit a source that is not considered a facility or part of a facility.**

Society of the Plastics Industry, Inc., commented that it supports the development of criteria for establishing de minimis levels of air contaminants, including the establishment of a list of de minimis facilities or sources. Society of the Plastics Industry, Inc., supports the use of alternative approaches to qualify for de minimis status. However, SPI is concerned about some of the proposed rates of material usage under §116.119(a)(2). Society of the Plastics Industry, Inc., believes that the rate of 50 gallons per year for cleaning and stripping solvents in §116.119(a)(2)(A) is unnecessarily low and will significantly restrict the number of small facilities that might otherwise qualify as de minimis. Similarly, the limit of 100 gallons per year of coatings (excluding plating materials) in

§116.119(a)(2)(B) is too restrictive. Society of the Plastics Industry, Inc., asked the commission to consider higher throughput/material usage limits for these two categories.

**The rule is not being revised in response to this comment. The amounts and materials in the rule were determined by input from the commission's regional offices, that are responsible for site inspections, and by engineering and toxicological review. In some cases, air dispersion modeling was compared with the commission's effects screening levels (ESLs), using typical design, location, and emission rates of facilities or sources using the materials. The usage rates for cleaning and stripping solvents and for coatings were set at levels which ensure no discernable or unacceptable impact to public health, given the one size fits all approach to de minimis and the fact that no additional limitations are included. Even if a facility does not meet the new de minimis criteria, the existing options for obtaining permits by rule or a permit are still available.**

Society of the Plastics Industry, Inc., commented that the process to amend the list of de minimis facilities or sources under §116.119(c)(1), might allow a third party to petition the commission to delete a listed facility without adequate opportunity for the listed facility to respond to the petition. Society of the Plastics Industry, Inc., urges the commission to provide adequate notice and opportunity for response by the owners of listed facilities or sources should such a petition be submitted by a third party. Brown McCarroll & Oaks Hartline suggested that the List of De Minimis Facilities or Sources be published periodically in the *Texas Register*, but not necessarily for public comment. This would create an official public notice of the list and would create an official record of what the list was at any given

time. Additionally, BMOH suggested that deletions from the list should go through notice and comment so that those facilities potentially losing de minimis status can comment. They suggested adding a new subsection to provide for notice and comment for deletions from the list and to allow for a reasonable amount of time for the facility to apply for a permit or other authorization without the facility being in violation of the de minimis provisions.

**The rule has been revised to provide that when amending the list to add or delete categories of facilities, sources, or groups of facilities or sources, the executive director will publish notice of the proposed amendment on the commission's home page on the World Wide Web and will allow 30 days for comments. The executive director will provide a copy of the response to comments to any commenter and publish the response on the commission's home page on the World Wide Web. The commission does not believe that it is necessary to publish the list in the *Texas Register* since the list, and all previous versions of the list, will be continuously available on the commission's home page. The rule has been revised to provide that if a category of facilities, sources, or groups of facilities or sources is deleted from the list, the owner or operator will have 180 days from the date of publication of the amended list on the commission's home page on the World Wide Web to obtain, register, or apply for authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule).**

Texas Industry Project expressed its support for the concept of de minimis facilities or sources. Texas Industry Project commented that SB 766 did not intend to limit activities at petrochemical facilities or

other industries from gaining preconstruction authorization relief under the de minimis provision and that the commission should clarify this in the preamble. Texas Industry Project believes that certain activities at these facilities are appropriate for listing as de minimis such as fugitive components in inorganic service and emissions from the activation of fire suppression systems.

**The commission agrees with TIP that certain activities at petrochemical facilities or other industries can be considered to be de minimis and has revised the preamble accordingly. If TIP wishes to submit a petition for the addition of fugitive components in inorganic service and emissions from the activation of fire suppression systems, the executive director can review those activities based on the criteria set forth in the rule and determine if they should be added to the list.**

Texas Industry Project commented that the commission provided no basis for limiting the third option for being de minimis to activities located inside of a building. If the emission rate caps are met, a facility or source should be able to qualify as de minimis whether or not it is located inside a building. Texas Industry Project recommends that the words “located inside a building” be deleted from §116.119(a)(3).

**The rule has not been revised in response to this comment. The emission rate caps in the third option are based on ESLs compared with off-property impacts using air dispersion modeling of a very small site. The commission limited the third option for being considered de minimis to those**

**facilities located inside buildings because of the higher off-property impacts predicted from ground-level fugitive emissions that would result from facilities located outside of buildings. If facilities located outside of buildings are included in the third option, at a minimum, the corresponding emission rates would need to be adjusted downward. This would be necessary to ensure no discernable or unacceptable impact to public health, given the one size fits all approach to de minimis and the fact that no additional limitations, such as buffer zones, are included.**

Brown McCarroll & Oaks Hartline suggested that the Texas Natural Resource Conservation Commission (TNRCC) clarify §116.119(a)(3) because the provision is unclear as to whether the emission rate cap applies to the facility, the building, or the site. Brown McCarroll & Oaks Hartline believes the emission rate cap should be applied to the facility.

**The commission agrees the rule was not clear and has revised §116.119(a)(3) to include the term “sitewide.”**

Texas Industry Project expressed concern about the reference to ESLs in the regulation. Texas Industry Project believes that the reference to ESLs in §116.119(a)(3) is troublesome to the extent it implies that the ESL itself is a standard. In the past, the commission has recognized the danger of treating ESLs as standards and TIP does not believe that the reference is necessary and suggests instead that the regulation refer to the emission caps without reference to ESLs. Brown McCarroll & Oaks Hartline commented that the reference to ESLs in §116.119(a)(3) appears to establish ESLs as a rule and

therefore the rules must reference a specific ESL list. Changes to the list would have a direct regulatory impact and must undergo rulemaking. The TNRCC should add a provision allowing a certain amount of time for a facility to come into compliance with a revised ESL, without the facility being in violation of the provision.

**The commission disagrees that reference to the ESLs in the rule implies that they are standards or a rule. Effects screening levels are substance-specific guideline comparison values used to determine whether measured air concentrations would be expected to result in adverse health or welfare effects. They are included as part of a mechanism to provide another option for being de minimis, i.e., a range of de minimis emission rates which ensure no discernable or unacceptable impact to public health. However, the commission does agree that revisions to the ESL list could potentially cause previously de minimis facilities to be subject to Chapter 116, Subchapter B. Therefore, it is appropriate to include a reference to a specific ESL list, and the rule has been revised accordingly. If and when the ESL list is revised, and that revision has a substantive effect on the range of ESLs referenced, §116.119 will be revised through rulemaking to include the date of the latest ESL list. The commission has not added, in this rulemaking, a future compliance date for facilities that would no longer be de minimis if an ESL is changed, but will consider that as part of future revisions to §116.119, if appropriate. However, the ESL list, itself, would not be subject to notice and comment as a part of that rulemaking.**

Brown McCarroll & Oaks Hartline, L.L.P. supports the executive director being able to make case-by-case determinations for facilities to qualify as being de minimis. Brown McCarroll & Oaks Hartline, L.L.P. suggested that if the executive director's determination is based on §116.119(a)(4)(A), the commission should ensure that a change in the proximity to receptors would not nullify the de minimis determination. A facility should not lose its de minimis status due to factors beyond its control, especially in instances where there is no increase of emissions from the facility.

**No changes have been made to the rule in response to this comment. At the time a case-by-case de minimis determination is made, the executive director will consider the likelihood that receptors could move into the area impacted by the de minimis facility. Therefore, the de minimis status of a facility, as determined by the executive director on a case-by-case basis, is unlikely to change. However, if a facility is later determined to be in violation of any commission rule, permit, order, or statute, including nuisance prohibitions, it would not longer be considered de minimis and must obtain the appropriate authorization. Therefore, a facility could lose its de minimis status due to factors beyond its control.**

Brown McCarroll & Oaks Hartline, L.L.P. suggested that §116.119(b) should be clarified such that an action taken by a third party not under a company's ownership and control that occurs after a de minimis determination does not automatically result in the source being in violation for failing to have a permit or other authorization. The commission should provide a phase-in period for the facility owner to submit an application or a registration without being in violation of the de minimis provisions.

**No change has been made in response to this comment. The design of the de minimis criteria, e.g., list, usage rates, no buffer zones, make it unlikely for third party actions to alter a facility's de minimis status.**

Texas Industry Project suggested that the commission review case-by-case de minimis determinations for similarities. If such exist, the commission should propose to add certain cases to the de minimis listing during future rule reviews or in combination with action by the executive director to amend the list pursuant to §116.119(c).

**The commission agrees that if numerous similar case-by-case de minimis determinations are made, that they would be candidates for being added to the list.**

An individual commented negatively regarding MPPs. Allowing large corporations with grandfathered facilities to pollute more in one community than another creates an environmental inequity and environmental justice issues. Some people will be exposed to more air pollution while others will breathe less pollution. The maximum reduction of air pollution should be required from each source.

**The rule has not been revised in response to these comments. Texas Clean Air Act, §382.05194 provides for MPPs for existing facilities as long as the aggregate rate of emission of air contaminants does not exceed the total authorized in existing permits and the rate that would be authorized under any VERPs. There must also be no indication that emissions from the facilities**

**will contravene the intent of the TCAA, including protection of the public's health and property. In addition, the MPP may not authorize emissions from any facility that would exceed that facility's highest historic annual rate or levels authorized in the most recent permit. Because an MPP cannot authorize a facility to exceed its current emission limitations, no person should be exposed to more air pollution. In addition, the MPP process allows the commission the ability to determine the health impacts from existing facilities.**

United States Environmental Protection Agency asked the commission to complete a Subpart I checklist for Subchapter J, Multiple Plant Permits, to demonstrate that the subchapter satisfies the provisions of 40 CFR Part 51, Subpart I.

**The referenced checklist appears to be a useful tool for the EPA to verify that proposed SIP revisions meet the requirements of 40 CFR Part 51, Subpart I. However, the commission is not submitting the new MPP sections in Chapter 116 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part 51, Subpart I might apply to the MPP program. If and when the MPP program is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I. Even though the commission has not responded to this request for information as part of this analysis of testimony, the commission will work with the EPA to address any specific concerns regarding the MPP program.**

United States Environmental Protection Agency asked for the following to be clarified for the record:

1) What are the benefits of an owner or operator receiving an MPP? 2) Please describe any environmental benefits that will result from issuing MPPs. 3) Can an owner or operator use an MPP to facilitate trading of emissions between the individual sources under the MPP and if so, show that such trading meets EPA regulations and guidelines. 4) Can an owner or operator with an MPP use increases and decreases in emissions to perform netting under the permitting programs under §§116.150, 116.151 and 116.160? If so, how is this consistent with these provisions and with 40 CFR §51.165, Permit Requirements, and §51.166, Prevention of Significant Deterioration of Air Quality?

**The primary benefit of an MPP for an owner or operator would be to allow for flexible permitting of existing grandfathered facilities by allowing them to over control certain existing facilities while allowing other existing facilities to retain the status quo. The aggregate rate of emissions from an MPP can be no more than the sum of existing permit allowables plus the levels that would be required under the VERP program for grandfathered facilities. The environmental benefit is that the aggregate emissions from grandfathered facilities under an MPP would have to reflect the emission levels required under the VERP program. The MPP program is not a trading program, but rather a program that provides a method for establishing levels of controls at existing facilities. Increases and decreases of emissions by an owner or operator with an MPP can be used for netting as long as the requirements under the commission's rules for nonattainment**

**and PSD permitting are met. Section 116.1011(a)(1) and (2) requires demonstration that the requirements of §116.711 and §116.811 are met, which includes references to the nonattainment and PSD permitting requirements. Those programs are consistent with the federal provisions.**

Association of Texas Intrastate Natural Gas Pipelines supports the effort to permit grandfathered facilities and to achieve emission reductions from those facilities through voluntary, incentive-based programs, and noted that ten-year old best available control technology (BACT) is a key element of this effort. Association of Texas Intrastate Natural Gas Pipelines is concerned about the development of ten-year old BACT for grandfathered engines at compressor stations since some of these engines are not retrofittable and while old, still have a remaining useful life. A Association of Texas Intrastate Natural Gas Pipelines noted that it will continue to work with the commission to develop ten-year old BACT for these facilities in order to increase participation of this industry in the program.

**The commission understands the concern and will also continue to work with ATINGP and other interested parties to determine ten-year old BACT for grandfathered engines.**

Association of Texas Intrastate Natural Gas Pipelines commented that the proposed rules did not allow the shifting of emissions from facility to facility during operation. While emissions are allowed to be netted and shifted prior to MPP issuance, after issuance, each facility has an assigned emission rate.

Association of Texas Intrastate Natural Gas Pipelines believes that the original concept and intent of SB 766 was that MPPs would allow flexibility in operations and asks the commission to incorporate that concept into the rules.

**The rule has not been revised in response to this comment. The commission agrees that emissions would be allowed to be shifted prior to MPP issuance, and that after issuance, each facility has an assigned emission rate. Texas Clean Air Act, §382.05194 specifically provides for flexibility on how to establish emission rates for facilities at multiple sites as long as an aggregate emission rate cap is not exceeded. However, §382.05194 does not address the issue of whether the MPP, once issued, would be static or dynamic. The commission is adopting the MPP rules providing for a static MPP, once issued, because of the complexity of ensuring compliance with a dynamic statewide MPP and ensuring that federal site-specific permitting requirements are not triggered. The commission believes the up front flexibility in shifting emission rates is consistent with SB 766.**

Association of Texas Intrastate Natural Gas Pipelines asked that the amnesty provisions from the VERP program be extended to the MPP program. Regardless of whether a grandfathered facility is permitted under a VERP or an MPP, the facility should have the benefit of the amnesty program. The proposed rule imposes the same deadline for applications for VERPs and MPPs, thus the two programs are on the same track for implementation. Association of Texas Intrastate Natural Gas Pipelines believes that

the commission has the authority to exercise its enforcement discretion to extend the amnesty provisions to the MPP program and requests that the commission do so.

**Section 12 of SB 766 provides that the commission may not initiate an enforcement action against a person for failure to obtain a preconstruction permit under TCAA, §382.0518 that is related to the modification of a facility if, on or before August 31, 2001, the person files an application under TCAA, §382.0519, Voluntary Emissions Reduction Permit. The commission believes that the intent of this “amnesty” was to encourage the permitting of grandfather facilities under the VERP program. The commission recognizes the value in providing identical amnesty to grandfather facilities that might be permitted under any preconstruction permitting mechanisms provided for by the TCAA. Therefore, the commission agrees to allow the identical “amnesty” for facilities which apply for an MPP.**

United States Environmental Protection Agency asked for clarification as to whether §116.1010(a)(1)(B) requires all grandfathered facilities to obtain a voluntary reduction permit under Subchapter H to qualify for an MPP.

**Section 116.1010(a)(1)(B) does not require all grandfathered facilities to obtain a VERP. Section 116.1010(a)(1) provides the requirements for summing the aggregate cap. The aggregate cap is the summation of permit allowables for permitted units included in the MPP plus emissions that “would” be allowed under the VERP program for grandfathered facilities included in the MPP.**

United States Environmental Protection Agency asked for an explanation of the §116.1010(b) reference to historic annual rate, in particular, the basis for allowing a source to document its historic annual rate which occurred prior to September 1, 1971. United States Environmental Protection Agency asked how emissions prior to that date are relevant today. United States Environmental Protection Agency also asked if the commission considers subsequent regulations and other provisions which required reductions in emissions and if so, would the source ever emit at such a historical maximum emission rate (occurring before September 1, 1971) and still comply with applicable regulatory requirements. United States Environmental Protection Agency also asked for an explanation for why such a source should not base its historic annual rate on its current (or representative) utilization with consideration of all current air pollution control measures that are required and/or used by the source.

**Section 116.1010(b) establishes the general limitation on the maximum rate that can be emitted by individual facilities included in an MPP, mirroring TCAA, §382.05194(b). The highest historic annual emission rate limitation would apply to facilities which do not have a permit, i.e., grandfathered facilities. Grandfathered facilities are those constructed or under construction prior to September 1, 1971. A facility may remain grandfathered from the state's new source review program as long as it is not modified, as that term is defined in TCAA, §382.003. Using the highest historic annual emission rate is consistent with commission practice for determining maximum allowable emissions from grandfathered facilities. However, the commission does consider subsequent regulatory requirements when establishing allowable emission rates. The highest historic annual emission rate is the highest emission rate that a facility under an MPP**

**would be allowed to emit, in general. However, other regulatory requirements could result in a lower allowable emission rate being placed in the permit. No TNRCC permit may allow a facility to avoid compliance with other regulatory requirements.**

With regard to §116.1010(b)(2), EPA asked if the commission has guidelines or provisions for determining the appropriate operation year that is to be used to determine the historic annual rate and if so, why has that guidance not been incorporated into the regulation for inclusion in the SIP. United States Environmental Protection Agency also asked for an explanation for why the commission is not proposing such guidelines or provisions and including them in the SIP.

**The adopted rule contains the provisions for determining the highest historic annual emission rate. Beyond the provisions in the regulation, no formal guidelines or provisions for determining the appropriate operation year for the historic annual rate have been developed. The application of these provisions is straightforward (i.e., based on emissions data) and the commission does not see a need to develop elaborate guidance since the establishment of a highest historic annual rate is case-by-case specific. The commission is not submitting the new MPP sections in Chapter 116 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part 51, Subpart I might apply to the MPP program. If and when the**

**MPP program is submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part 51, Subpart I.**

Concerning §116.1010(c), EPA asked the commission to address whether the removal, disabling, maintenance, or upgrading of emission control equipment should be evaluated to demonstrate that such action does not render the unit less environmentally beneficial, citing to 40 CFR §§51.165(a)(1)(v)(C)(8), 51.166(b)(2)(iii)(h), and 60.14(e)(5).

**As stated previously, the commission is not submitting the MPP program as a SIP revision at this time. Therefore, it is premature to determine how the referenced sections of the 40 CFR might apply. Nonetheless, the intent of §116.1010(c), which mirrors TCAA, §382.05194(c), is that control equipment should not be removed unless there is an environmental benefit.**

ExxonMobil commented that §116.1010(a)(1)(A) should be deleted and §116.1010(a)(1)(B) should be revised. The applicability limitations in these two clauses seems to limit existing permitted facilities from fully participating in the MPP proposal. It was ExxonMobil's interpretation of the CARE Committee recommendation that the use of MPPs was not limited to grandfathered facilities and that a group of facilities which in aggregate meet the appropriate level of emission control (BACT or ten-year old BACT) and that are geographically located in a single air shed, should be able to bubble emissions among those facilities. The CARE recommendations did not limit this to only grandfathered facilities and it did not place a limit on current emission limits in facility permits. An owner or operator with

several facilities in a single air shed should be allowed to obtain an MPP for any combination of facilities, all previously permitted, all grandfathered or a combination. The owner or operator should be able to make decisions regarding the operating rates and installation of new emission control equipment among those facilities as long as the total emissions remain below the aggregate emission levels.

**The rule has not been revised in response to this comment. The commission agrees that MPPs can include a combination of existing grandfathered and permitted facilities, and is clarifying that here. The aggregate emission rate defined in §116.1010(a)(1) is the total, or sum, of the permitted rates in §116.1010(a)(1)(A) and the grandfathered rates in §116.1010(a)(1)(B).**

Brown McCarroll & Oaks Hartline, L.L.P. suggested that §116.1010(a)(1)(B) be split into two subsections. Subparagraph (B) “or for facilities...Permits” should be stricken from the provision because facilities authorized under Subchapter H are already covered adequately by subsection (a)(1)(A).

**The rule has not been revised in response to this comment. The three types of facilities, previously permitted, unpermitted grandfathered, and facilities with VERPs, are consistent with the statutory provisions in TCAA, §382.05194(a)(1)(A) and (B). The commission has interpreted “previously permitted” to be those facilities that have been permitted under the provisions of**

**TCAA, §382.0518 prior to the passage of SB 766, and do not include those facilities permitted under Subchapter H.**

ExxonMobil requested clarification of the requirement in §116.1010(b) and suggested revised wording. ExxonMobil believes that this requirement could be interpreted to place either a highest or upper limit on the allowable authorization or a lowest limit on the authorization. Will a permit writer choose the higher or the lower of these two options? Texas Oil and Gas Association commented that the intent of §116.1010(b) is not clear and requested clarification that the intent is to cap emissions from individual facilities included in the MPP at the higher of each facility's highest historic annual rate or the levels in the facility's most recent permit. Texas Industry Project commented that it is not clear that §116.1010(b)(1) applies only to grandfathered facilities and that if it is not the intent of the commission to limit use of the §116.1010(b)(1) to grandfathered facilities that the rule should be clarified. Texas Industry Project offered language accordingly.

**Section 116.1010(b) and (b)(1) have been revised to clarify that if a facility is permitted, the rate would be the emission rate allowed in its most recent permit, whether or not that rate is higher or lower than the highest historic annual emission rate. If a facility is grandfathered, the highest historic annual emission rate will be used.**

Brown McCarroll & Oaks Hartline, L.L.P. suggested amending §116.1010(b)(2) to delete the phrase "and agreed upon by the executive director."

**The rule has not been revised in response to this comment. The commission does not believe it is appropriate to remove the executive director from the determination of highest historic annual rate.**

Texas Oil and Gas Association commented that it believes §116.1010(a) clearly provides that the intent of the MPP is to permit construction or modification of existing facilities at multiple plant sites with specified caps on the aggregate rate of emission of air contaminants, provided there is no indication that the emissions will contravene the intent of the TCAA.

**Texas Clean Air Act, §382.051(b)(6) authorizes the commission to issue an MPP for existing facilities. Texas Clean Air Act, §382.051(a)(2) authorizes the commission to issue a permit to “operate” an existing facility under a VERP. The commission believes that the primary intent of the MPP is to provide a streamlined, flexible mechanism for the permitting of grandfathered facilities at multiple plant sites. Given that TCAA, §382.05194 does not provide any mechanism for construction or modification of facilities, the commission disagrees that the intent of the MPP is to permit construction of new facilities or modification of existing facilities.**

Texas Oil and Gas Association commented that the intent was that the MPP should be modeled after the flexible permit program, which is consistent with the commission’s recommendations to the legislature in the “Voluntary Emissions Reduction Plan for the Permitting of Existing Significant Sources Required

by House Bill 3019,” August 19, 1998. That report had a recommendation for an MPP modeled after the flexible permit program with an ability to allow trading of emissions between sites.

**The majority of the CARE Committee recommended that the agency examine the possibility of developing a multiple plant permit modeled after the current flexible permit program, but covering multiple sites. Texas Clean Air Act, §382.05194 specifically provides for flexibility on how to establish emission rates for facilities at multiple sites as long as an aggregate emission rate cap is not exceeded. However, §382.05194 does not address the issue of whether the MPP, once issued, would be static or dynamic. The commission is adopting the MPP rules providing for a static MPP, once issued, because of the complexity of ensuring compliance with a dynamic state-wide MPP and ensuring that federal site-specific permitting requirements are not triggered. The commission believes the up front flexibility in shifting emission rates is consistent with SB 766.**

Texas Industry Project suggests that §116.1010(a)(2) be revised to delete the undefined phrase “no indication.”

**The commission agrees and has revised the rule accordingly.**

Association of Texas Intrastate Natural Gas Pipelines commented that §116.1011(a)(2) requires an applicant for an MPP to provide information required by §116.811. Section 116.811 has the application requirements for a VERP and includes the requirement for ten-year old BACT for

attainment areas and GACT for nonattainment areas. Association of Texas Intrastate Natural Gas Pipeline suggested that an applicant for an MPP would not be required to add control technology, rather a component of the aggregate emission rate for grandfathered facilities covered by an MPP would be the level of emissions that would be achieved had control technology under the VERP program been used. Association of Texas Intrastate Natural Gas Pipelines asked that its suggested language be added to §116.1011(a)(2) to clarify that a grandfathered facility that elects to be covered by an MPP does not have to add control technology to be permitted. Texas Industry Project was also concerned that the provision could be construed to incorporate substantive requirements such as retrofitting to ten-year old BACT, and requested clarification of the intent of §116.1010(a)(2) and the rule language.

**The commission agrees, and has added language to §116.1011(a)(2) and to the preamble to clarify that the VERP control technology information is needed solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the multiple plant permit.**

Association of Texas Intrastate Natural Gas Pipelines also asked for a clarification to §116.1011(b) by adding the phrase “for a multiple plant permit” between the words “apply” and “prior.”

**The commission agrees and has revised the rule accordingly.**

Brown McCarroll & Oaks Hartline, L.L.P. commented that §116.1011(b) should be stricken because TCAA, §382.05194(a)(1)(B) does not require a grandfathered facility which does not apply prior to September 1, 2001 to first obtain a permit under Subchapter B before it is eligible to be included in an MPP. The commission is attempting to deprive facilities of what the statute provides in §382.0519 and §382.05194(a)(1)(B). Section §116.1011(b) has the effect of limiting total MPP allowable rates by requiring grandfathered facilities to obtain a New Source Review Permit. Senate Bill 766 does not authorize the commission to impose this limitation, and in fact, it specifically allows grandfathered facilities to be included in an MPP, but limits allowable emissions to those that would be allowed under Subchapter H.

**The rule has not been revised in response to this comment. The commission agrees that if a VERP has been obtained for a facility, that facility would be able to obtain an MPP on or after September 1, 2001, without obtaining a new source review permit. Once a VERP is obtained those facilities are no longer considered grandfathered. Therefore, §116.1011(b) would only apply to those grandfathered facilities that did not take advantage of the VERP program. Texas Clean Air Act, §382.05194(a)(1)(B) provides that the emission rate to be used for calculating the aggregate rate from existing unpermitted facilities will be “the rates that would be authorized” under the VERP program. Since the VERP program expires on September 1, 2001, the commission does not believe the statute contemplated extending the benefits of the VERP program after that date.**

**During review of the proposed rule, staff discovered an incorrect citation in §116.1014. That section has been revised to correctly refer to §116.114 instead of §116.614.**

Brown McCarroll & Oaks Hartline, L.L.P. suggested that §116.1020 be amended so that “not within the scope of an MPP” be inserted directly after “facility.” This would provide the flexibility that the MPP was intended to create since preconstruction authorization or modification would not be required under a MPP if the modification would not result in an increase in either maximum historical emission rates or the maximum allowable emissions under the permit.

**The rule has not been revised in response to this comment. The definition of “modification” in TCAA, §382.003(9)(F) excludes changes within the scope of an MPP from being defined as a modification. Therefore, §116.1020 does not apply to changes that are within the scope of an MPP.**

ExxonMobil believes that the provisions of §116.1021(a) place a restriction on applicants for an MPP in that all representations in the MPP application are considered enforceable conditions of the subsequently issued permit. ExxonMobil is concerned that applicants will end up in an enforcement “Catch 22” because sometimes the final permit may mandate activity, conditions, or restrictions that are different from the applicant’s original representations. They suggested that the automatic incorporation of application representations into a permit without actual inclusion of those representations could place some facilities at risk of an unintentional violation of their permit.

**The rule has not been revised in response to this comment. During the review of the permit application, correspondence is often exchanged between the applicant and the commission that results in revisions to the information contained in the application. The final permit reflects all of the representations in an application, including those that were refined during the review process.**

Texas Industry Project requested that the commission clarify that proposed §116.1021(a) is not intended to preclude qualified grandfathered facilities from making changes if it is determined that those changes are consistent with §116.116(e).

**The commission agrees that qualified facilities which are at the same plant site are not precluded from making changes consistent with §116.116(e) as long as the multiple plant permit is altered accordingly. However, §116.116(e) is not intended to allow for the movement of emissions from one plant site to another.**

Brown McCarroll & Oaks Hartline, L.L.P. expressed its support of §116.1021(c)(1), but opposed §116.1021(c)(2). Section §116.1021(c)(2) acts as a disincentive to obtain an MPP because facilities or sites authorized under other mechanisms are free to avail themselves of permit by rule authorization. The commission provided no rationale for this provision so BMOH had no choice but to oppose it.

**The rule has not been revised in response to this comment. Texas Clean Air Act, §382.05194(a) and (b) clearly specifies how the aggregate cap and individual facility emission limitations are to**

**be derived. The commission believes that it would be inappropriate to allow the use of permits by rule to exceed the cap or individual facility emission limitations. In addition, the language in §116.1021(c)(2) is consistent with the limitations of the flexible permitting program under Subchapter G which also employs the concept of an aggregate cap and individual limitations.**

United States Environmental Protection Agency asked how §116.1040 and §116.1041 meet the provisions of 40 CFR §51.161, Public Availability of Information and requested that this be addressed when completing the Subpart I checklist.

**The commission is not submitting new §116.1040 and §116.1041 as a SIP revision at this time, and it is thus premature to determine how 40 CFR Part §51.161 might apply. If and when §116.1040 and §116.1041 are submitted as a SIP revision, the commission will address the EPA's questions regarding the applicability of 40 CFR Part §51.161. The commission will continue to work with the EPA to address any specific concerns regarding §116.1040 and §116.1041.**

An individual commented that the fee for MPPs is ridiculous and suggested that far more is spent by the commission on agency personnel, materials, and resources. Polluters should be required to pay and large industrial corporations should not be subsidized.

**The rule has not been revised in response to this comment. The application fee for new or modified facilities is 0.15% of the capital cost of a project with a \$450 minimum fee and a \$75,000**

**maximum fee. This fee structure has proven adequate to cover the cost of implementing the NSR permitting program, historically. Because the MPP covers existing facilities, as opposed to new or modified facilities, the commission expects the demand on agency personnel and materials to be minimal.**

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also adopted under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the

atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

## **SUBCHAPTER A : DEFINITIONS**

### **§116.10**

#### **§116.10. General Definitions.**

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

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

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

(B) **Facility permitted by rule** - For a facility operating under Chapter 106 of this title, the allowable emissions shall be the least of the emissions rate allowed in Chapter 106, Subchapter A of this title (relating to General Requirements), the emissions rate specified in the applicable permit by rule, or the federally enforceable emission rate established on a PI-8 form.

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

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

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

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

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

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

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

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

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

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

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

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

(F) any permit requirements established under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

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

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

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

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

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, under the TCAA, §382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emission of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCAA, §382.057, an air pollution control method that is at least as effective as the BACT that the commission required or would

have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

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

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

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

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

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

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

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

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

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

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

**SUBCHAPTER B : NEW SOURCE REVIEW PERMITS**

**DIVISION 1 : PERMIT APPLICATION**

**§§116.110, 116.116, 116.119**

**STATUTORY AUTHORITY**

The amendments and new section are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments and new section are also proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the

commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

**§116.110. Applicability.**

(a) Permit to construct. Before any actual work is begun on the facility, any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall either:

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

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

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

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

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

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

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

(4) satisfy the conditions for facilities permitted by rule under Chapter 106 of this title (relating to Permits by Rule); or

(5) satisfy the criteria for a de minimis facility or source under §116.119 of this title (relating to De Minimis Facilities or Sources).

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

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

(1) a permit by rule under Chapter 106 of this title;

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

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

(d) Change in ownership.

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

(A) the date of the ownership change;

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

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

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

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

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

(e) Submittal under seal of Texas licensed professional engineer. Applications for permit or permit amendment with an estimated capital cost of the project above \$2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a Texas licensed professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas Board of Professional Engineers. The estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

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

**§116.116. Changes to Facilities.**

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

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

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

(b) Permit amendments.

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

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

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

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

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

(3) Any person who applies for an amendment to a permit to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) under

Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 of this title (relating to Public Notice).

(4) Any person who applies for an amendment to a permit to construct a new facility or modify an existing facility shall comply with the provisions in Chapter 39 of this title.

(c) Permit alteration.

(1) A permit alteration is:

(A) a decrease in allowable emissions; or

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

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

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

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

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

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

(B) involve a change in permit conditions; or

(C) affect facility or control equipment performance.

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

(4) A request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(a)(2)(C) of this title.

(5) Permit alterations are not subject to the requirements of §116.111(a)(2)(C) of this title.

(d) Permits by rule under Chapter 106 of this title (relating to Permits by Rule) in lieu of permit amendment or alteration.

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

(2) All changes authorized under Chapter 106 of this title to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.

(e) Changes to qualified facilities.

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

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

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

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

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

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

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

(3) The determination in paragraph (1) of this subsection shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical or operational change would result in emissions of a air contaminant category or compound above the allowable emissions for that air contaminant category or compound, the amount above the allowable emissions must be offset by an equivalent decrease in emissions at the same facility or a different facility. In making this offset, the following applies.

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

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

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

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

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

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

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

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

(A) construction of a new facility; or

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

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

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

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

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

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

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

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

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

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

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

**§116.119. De Minimis Facilities or Sources.**

(a) Facilities or sources that meet the conditions of one or more of the paragraphs of this subsection are considered by the commission to be de minimis, which means that registration or

authorization prior to construction is not required:

(1) categories of facilities or sources included on the list entitled “De Minimis Facilities or Sources;”

(2) facilities or sources at a site which, in combination, use the following materials at no more than the rate prescribed in subparagraphs (A) - (F) of this paragraph:

(A) cleaning and stripping solvents, 50 gallons per year;

(B) coatings (excluding plating materials), 100 gallons per year;

(C) dyes, 1,000 pounds per year;

(D) bleaches, 1,000 gallons per year;

(E) fragrances (excluding odorants), 250 gallons per year;

(F) water-based surfactants/detergents, 2,500 gallons per year;

(3) facilities or sources located inside a building at a site which meet the following sitewide emission rate caps based on the July 19, 2000 Effects Screening Levels (ESL) list without the addition of control devices, as defined in §101.1 of this title (relating to Definitions).

Figure: 30 TAC §116.119(a)(3)

ESL of Substance(s) ( $\mu\text{g}/\text{m}^3$ )	Emission Rate Cap for Individual Substances, Sitewide		Emission Rate Cap for Multiple Substances, Sitewide	
	(pounds/day)	(tons/year)	(pounds/day)	(tons/year)
$\geq 3500$	5	0.9	10	2.4
1200-3499	3	0.5	6	1.3
400-1199	1	0.2	3	0.5
100-399	0.25	0.05	1	0.2

(4) any individual facility, source, or group of facilities or sources which the executive director determines to be de minimis based upon:

- (A) proximity to receptors;
- (B) rate of emission of air contaminants;
- (C) engineering judgment and experience; and

(D) determination that no adverse toxicological or health effects would occur off property.

(b) De minimis facilities or sources at a site which are subsequently determined by the executive director to be in violation of any commission rule, permit, order, or statute within the commission's jurisdiction, will no longer be considered de minimis and must obtain registration or authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule).

(c) The "List of De Minimis Facilities or Sources" will be maintained in the commission's Office of Permitting, Remediation, and Registration in Austin, with copies maintained in the commission's regional offices, and on the commission's home page on the World Wide Web.

(1) Persons may petition the executive director to amend the "List of De Minimis Facilities or Sources" or the executive director may amend the list as necessary.

(2) When amending the list to add or delete categories of facilities, sources, or groups of facilities or sources, the executive director will consider, at a minimum, the following:

(A) typical operating scenarios;

(B) typical design and location;

(C) the types and rates of air contaminants emitted;

(D) engineering judgment and experience; and

(E) toxicological or health impacts.

(3) When amending the list to add or delete categories of facilities, sources, or groups of facilities or sources, the executive director will publish notice of the proposed amendment on the commission's home page on the World Wide Web and will allow 30 days for comments. If a category of facilities, sources, or groups of facilities or sources is deleted from the list, the owner or operator will have 180 days from the date of publication of the amended list on the commission's home page on the World Wide Web to obtain, register, or apply for authorization under this chapter or Chapter 106 of this title (relating to Permits by Rule).

## **SUBCHAPTER F : STANDARD PERMITS**

### **§116.603, 116.620, 116.621**

#### **STATUTORY AUTHORITY**

The amendments are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also adopted under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air

contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

**§116.603. Public Participation in Issuance of Standard Permits.**

(a) The commission will publish notice of a proposed standard permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed standard permit. If the proposed standard permit will have statewide applicability, notice will be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Amarillo, Austin, Corpus Christi, Dallas, El Paso, Houston, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler. In both cases, the commission will publish notice in the *Texas Register*.

(b) The contents of a public notice of a proposed standard permit shall be in accordance with §122.506 of this title (relating to Public Notice for General Operating Permits) except where clearly not applicable. Each notice will include an invitation for written comments by the public regarding the proposed standard permit. The public notice will specify a comment period of at least 30 days and the public notice will be published not later than the 30th day before the commission issues a standard permit.

(c) The commission will hold a public meeting to provide an additional opportunity for public comment. The commission will give notice of a public meeting under this subsection as part of the notice described in subsection (b) of this section not later than the 30th day before the date of the meeting. The public comment period shall automatically be extended to the close of any public meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission will issue a written response to the comments at the same time the commission issues or denies the permit. The commission will make the response available to the public, and shall mail the response to each commenter.

(e) The commission will publish notice of its final action on the proposed standard permit and the text of its response to comments in the *Texas Register*.

(f) The commission will make a copy of any issued standard permit and response to comments available to the public for inspection at the commission's Office of Permitting, Remediation, and Registration in its Austin office, and also in the appropriate regional offices

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

(a) Emission specifications.

(1) Venting or flaring more than 0.3 long tons per day of total sulfur shall not be allowed.

(2) No facility shall be allowed to emit total uncontrolled emissions of sulfur compounds, except sulfur dioxide (SO<sub>2</sub>), from all vents (excluding process fugitives emissions) equal to or greater than four pounds per hour unless the vapors are collected and routed to a flare.

(3) Any vent, excluding any safety relief valves that discharge to the atmosphere only as a result of fire or failure of utilities, emitting sulfur compounds other than SO<sub>2</sub> shall be at least 20 feet above ground level.

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

(5) Total Volatile Organic Compound (VOC) emissions from a natural gas glycol dehydration unit shall not exceed ten tons per year (tpy) unless the vapors are collected and controlled in accordance with subsection (b)(2) of this section.

(6) Any combustion unit (excluding flares, internal combustion engines, or natural gas turbines), with a design maximum heat input greater than 40 million British thermal units (Btu) per hour (using lower heating values) shall not emit more than 0.06 pounds of nitrogen oxides per million Btu.

(7) No facility which is less than 500 feet from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than ten tpy, but less than 25 tpy, unless the equipment is inspected and repaired according to subsection (c)(1) of this section.

(8) No facility which is 500 feet or more from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 25 tpy unless the equipment is inspected and repaired according to subsection (c)(1) of this section.

(9) No facility which is less than 500 feet from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 25 tpy unless the equipment is inspected and repaired according to subsection (c)(2) of this section.

(10) No facility shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 40 tpy unless the equipment is inspected and repaired according to subsection (c)(2) of this section.

(11) No facility which is located less than 1/4 mile from the nearest off-plant receptor shall be allowed to emit hydrogen sulfide H<sub>2</sub>S or SO<sub>2</sub> process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section. No facility which is located at least 1/4 mile from the nearest off-plant receptor shall be allowed to emit H<sub>2</sub>S or SO<sub>2</sub> process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section or unless the H<sub>2</sub>S or SO<sub>2</sub> emissions are monitored with ambient property line monitors according to subsection (e)(1) of this section. Components in sweet crude oil or gas service as defined by Chapter 101 of this title (relating to General Air Quality Rules) are exempt from these limitations.

(12) Flares shall be designed and operated in accordance with 40 Code of Federal Regulations (CFR), Part 60.18 or equivalent standard approved by the commission, including specifications of minimum heating values of waste gas, maximum tip velocity, and pilot flame monitoring. If necessary to ensure adequate combustion, sufficient gas shall be added to make the gases combustible. An infrared monitor is considered equivalent to a thermocouple for flame monitoring purposes. An automatic ignition system may be used in lieu of a continuous pilot.

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

required to meet the requirements of Subchapter B of this chapter (relating to New Source Review Permits) instead of this subchapter if a PSD or nonattainment permit or a review under Subchapter C of this chapter is required.

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

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

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

(17) New and increased emissions shall not cause or contribute to a violation of any National Ambient Air Quality Standard or regulation property line standards as specified in Chapters 111, 112, and 113 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter; Control of Air Pollution from Sulfur Compounds; and Control of Air Pollution from Toxic Materials). Engineering judgment and/or computerized air dispersion modeling may be used in

this demonstration. To show compliance with §116.610(a)(1) of this title (relating to Applicability) for H<sub>2</sub>S emissions from process vents, ten milligrams per cubic meter shall be used as the "L" value instead of the value represented by §116.610(a)(1) of this title.

(18) Fuel for all combustion units and flare pilots shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf), or field gas. If field gas contains more than 1.5 grains of H<sub>2</sub>S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H<sub>2</sub>S and total sulfur content, which demonstrate that the annual SO<sub>2</sub> emissions from the facility do not exceed the limitations listed in the standard permit registration. If a flare is the only combustion unit on a property, the operator shall not be required to maintain such records on flare pilot gas.

(b) Control requirements.

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

(A) For internal floating roofs, mechanical shoe primary seal or liquid-mounted primary seal or a vapor-mounted primary with rim-mounted secondary seal shall be used.

(B) Mechanical shoe or liquid-mounted primary seals shall include a rim-mounted secondary seal on all external floating roofs tanks. Vapor-mounted primary seals will not be accepted.

(C) All floating roof tanks shall comply with the requirements under §115.112(a)(2)(A) - (F) of this title (relating to Control Requirements).

(D) In lieu of a floating roof, tank emissions may be routed to:

(i) a destruction device such that a minimum VOC destruction efficiency of 98% is achieved; or

(ii) a vapor recovery system such that a minimum VOC recovery efficiency of 95% is achieved.

(E) Independent of the permits by rule listed in this paragraph, if the emissions from any fixed roof tank exceed ten tpy of VOC or ten tpy of sulfur compounds, the tank emissions

shall be routed to a destruction device, vapor recovery unit, or equivalent method of control that meets the requirements listed in subparagraph (D) of this paragraph.

(2) The VOC emissions from a natural gas glycol dehydration unit shall be controlled as follows.

(A) If total uncontrolled VOC emissions are equal to or greater than ten tpy, but less than 50 tpy, a minimum of 80% by weight minimum control efficiency shall be achieved by either operating a condenser and a separator (or flash tank), vapor recovery unit, destruction device, or equivalent control device.

(B) If total uncontrolled VOC emissions are equal to or greater than 50 tpy, a minimum of:

(i) 98% by weight minimum destruction efficiency shall be achieved by a destruction device or equivalent; or

(ii) 95% by weight minimum control efficiency shall be achieved by a vapor recovery system or equivalent.

(c) Inspection requirements.

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

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

(B) All technically feasible repairs shall be made to repair a VOC leaking process fugitive component within 15 days after the leak is detected. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such

repair by tagging. The executive director, at his discretion, may require early unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting shutdown.

(C) New and reworked underground process pipelines containing VOCs shall contain no buried valves such that process fugitive emission inspection and repair is rendered impractical.

(D) To the extent that good engineering practice will permit, new and reworked valves and piping connections in VOC service shall be so located to be reasonably accessible for leak-checking during plant operation. Valves elevated more than two meters above a support surface will be considered non-accessible and shall be identified in a list to be made available upon request.

(E) New and reworked piping connections in VOC service shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges in VOC service shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.

(F) Each open-ended valve or line in VOC service, other than a valve or line used for safety relief, shall be equipped with a cap, blind flange, plug, or a second valve. Except during sampling, the second valve shall be closed.

(G) Accessible valves in VOC service shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc or venting to a control device are exempt from monitoring.

(H) Dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system, submerged pumps, or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) are exempt from monitoring.

(I) All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements.

This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

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

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is found which exceeds a VOC concentration greater than 500 ppmv for all components except pumps and compressors and greater than 2,000 ppmv for pumps and compressors above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.044 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 psi (five Kpa) below ambient pressure, these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by agency representatives, the EPA, or any air pollution control agency having jurisdiction. All piping and valves two inches nominal size and smaller are also exempt from this requirement.

(B) All technically feasible repairs shall be made to repair a VOC leaking process fugitive component within 15 days after the leak is detected. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging. The executive director, at his or her discretion, may require early unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting shutdown.

(C) New and reworked underground process pipelines containing VOCs shall contain no buried valves such that process fugitive emission inspection and repair is rendered impractical.

(D) To the extent that good engineering practice will permit, new and reworked valves and piping connections in VOC service shall be so located to be reasonably accessible for leak-checking during plant operation. Valves elevated more than two meters above a support surface will be considered non-accessible and shall be identified in a list to be made available upon request.

(E) New and reworked piping connections in VOC service shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges in VOC service shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.

(F) Each open-ended valve or line in VOC service, other than a valve or line used for safety relief, shall be equipped with a cap, blind flange, plug, or a second valve. Except during sampling, the second valve shall be closed.

(G) Accessible valves in VOC service shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc or venting to a control device are exempt from monitoring.

(H) Dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order or seals equipped with an automatic seal failure detection and alarm system, submerged pumps, or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) are exempt from monitoring.

(I) All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of

valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(K) A directed maintenance program shall be used and consist of the repair and maintenance of VOC fugitive emission components assisted simultaneously by the use of an approved gas analyzer such that a minimum concentration of leaking VOC is obtained for each component being maintained. Replaced components shall be remonitored within 30 days of being placed back into VOC service.

(3) For owners and operators who are subject to the applicable parts of subsection (a)(11) of this section, auditory and visual checks for SO<sub>2</sub> and H<sub>2</sub>S leaks within the operating area shall be made every day. Immediately, but no later than eight hours upon detection of a leak, operating personnel shall take the following actions:

(A) isolate the leak; and

(B) commence repair or replacement of the leaking component; or

(C) use a leak collection/containment system to prevent the leak until repair or replacement can be made if immediate repair is not possible.

(d) Approved test methods.

(1) An approved gas analyzer used for the VOC fugitive inspection and repair requirement in subsection (c) of this section, shall conform to requirements listed in 40 CFR §60.485(a) and (b).

(2) Tutweiler analysis or equivalent shall be used to determine the H<sub>2</sub>S content as required under subsections (a) and (e) of this section.

(3) Proper operation of any condenser used as a VOC emissions control device to comply with subsection (a)(5) of this section shall be tested to demonstrate compliance with the minimum control efficiency. Sampling shall occur within 60 days after start-up of new or modified facilities. The permittee shall contact the Engineering Services Section, Office of Compliance and Enforcement 45 days prior to sampling for approval of sampling protocol. The appropriate regional

office in the region where the source is located shall also be contacted 45 days prior to sampling to provide them the opportunity to view the sampling. Neither the regional office nor the Engineering Services Section, Office of Compliance and Enforcement personnel are required to view the testing. Sampling reports which comply with the provisions of the "TNRCC Sampling Procedures Manual," Chapter 14 ("Contents of Sampling Reports," dated January 1983 and revised July 1985), shall be distributed to the appropriate regional office, any local programs, and the Engineering Services Section, Office of Compliance and Enforcement.

(e) Monitoring and recordkeeping requirements.

(1) If the operator elects to install and maintain ambient H<sub>2</sub>S property line monitors to comply with subsection (a)(11) of this section, the monitors shall be approved by the Engineering Services Section, Office of Compliance and Enforcement office in Austin, and shall be capable of detecting and alarming at H<sub>2</sub>S concentrations of ten ppmv. Operations personnel shall perform an initial on-site inspection of the facility within 24 hours of initial alarm and take corrective actions as listed in subsection (c)(3)(A) - (C) of this section within eight hours of detection of a leak.

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

Records, for all components, shall include:

(A) appropriate dates;

(B) test methods;

(C) instrument readings;

(D) repair results; and

(E) corrective actions. Records of flange inspections are not required unless a leak is detected.

(3) Records for repairs and replacements made due to inspections of H<sub>2</sub>S and SO<sub>2</sub> components shall be maintained.

(4) Records shall be kept for each production, processing, and pipeline tank battery or for each storage tank if not located at a tank battery, on a monthly basis, as follows:

(A) tank battery identification or storage tank identification, if not located at a tank battery;

(B) compound stored;

(C) monthly throughput in barrels/month; and

(D) cumulative annual throughput, barrels/year.

(5) A plan shall be submitted to show how ongoing compliance will be demonstrated for the efficiency requirements listed in subsection (b)(1)(D) of this section. The demonstration may include, but is not limited to, monitoring flowrates, temperatures, or other operating parameters.

(6) Records shall be kept on at least a monthly basis of all production facility flow rates (in standard cubic feet per day) and total sulfur content of process vents or flares or gas processing streams. Total sulfur shall be calculated in long tons per day.

(7) Records shall be kept of all ambient property line monitor alarms and shall include the date, time, duration, and cause of alarm, date and time of initial on-site inspection, and date and time of corrective actions taken.

(8) All required records shall be made available to representatives of the agency, the EPA, or local air pollution control agencies upon request and be kept for at least two years. All required records shall be kept at the plant site, unless the plant site is unmanned during business hours. For plant sites ordinarily unmanned during business hours, the records shall be maintained at the nearest office in the state having day-to-day operations control of the plant site.

**§116.621. Municipal Solid Waste Landfills.**

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

(1) An MSWLF and associated waste acceptance and handling facilities which comply with §116.610 of this title (relating to Applicability), except §116.610(a)(1) of this title; §116.611 of this title (relating to Registration Requirements); §116.614 of this title (relating to Standard Permit Fees); and §116.615 of this title (relating to General Conditions) qualify for a standard permit.

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

(A) industrial solid waste solidification/stabilization facilities;

(B) outdoor burning;

(C) waste incineration other than that used to control landfill gas emissions;

(D) landfill cells in which any regulated quantities of hazardous waste will be placed;

(E) MSWLF and MSW facilities with passive collection systems as defined in 40 Code of Federal Regulations (CFR), §60.751; and

(F) any project which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration review), Part D (nonattainment review) and regulations promulgated thereunder, or is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g) 40 CFR Part 63)) shall be subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(3) Registration shall include, in addition to the information required by §116.611 of this title, an initial design capacity report in accordance with 40 CFR, §60.757(a)(2).

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

(A) The gas collection and control system (GCCS) shall conform with specifications for active collection systems as specified in 40 CFR, §60.759.

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

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

(ii) a control device (such as an enclosed flare) with a minimum vent release height of 30 feet and which reduces the total collected NMOC gas emissions by 98%, or to less than 20 parts per million by volume (ppmv), as hexane;

(iii) a gas treatment system that processes the collected gas for subsequent use or sale. The sum of all emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of clause (ii) of this subparagraph;

(iv) gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that satisfy all of the requirements of Chapter 106, Subchapter A of this title and

§106.512 of this title (relating to Stationary Engines and Turbines), except that registration using Form PI-7 or PI-8 shall not be required; or

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

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

(5) MSWLF owners and operators shall monitor and control particulate matter as follows.

(A) All material handling and transport operations shall be conducted in a manner so as to minimize any fugitive particulate matter emissions.

(B) Roads and other areas subject to vehicle traffic shall be paved and cleaned, watered, or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(C) During excavation, MSWLF cells shall be watered or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(6) High volume air sampling for net ground level concentrations of total particulate matter shall be performed upon request of the executive director or a designated representative. Each test shall consist of at least one upwind and one downwind sample taken simultaneously. The tests shall be performed during normal operations. A monitoring plan for high volume sampling shall be developed in accordance with the Office of Air Quality Management Plan, Appendix I (EPA Requirements for Quality Assurance Project Plans, dated February 1995) and the "TNRCC Sampling Procedures Manual," Chapter 11 (dated January 1983 and revised July 1985), and shall require approval by the executive director or a designated representative prior to sampling. The executive director or a designated representative shall be afforded the opportunity to observe all such sampling equipment, operations, and records upon request.

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

(A) Instead of the definition in §116.620(c)(1)(A) of this title, a leak shall be defined as the escape of gas with a total organic compound concentration greater than or equal to 10,000 ppmv above background as methane; or the dripping or exuding of process fluid based on sight, smell, or sound.

(B) In §116.620(c)(1)(C) of this title, new and reworked underground pipelines containing NMOC that are located within the gas collection area and are in continuous vacuum service may contain buried valves.

(C) In §116.620(c)(1)(E) of this title, high density polyethylene pipe connections may be fused or flanged.

(D) In addition to those components exempted in §116.620(c)(1)(A) - (J) of this title, the following additional components are exempt from the maintenance and inspection protocols:

(i) components which are in a continuous vacuum service;

(ii) valves which are not externally regulated, such as in-line check valves;

(iii) pressure relief valves which are downstream of an intact rupture disc; and

(iv) reciprocating compressors which are equipped with degassing vents and vent control systems.

(E) Alternate methods of fugitive monitoring may be used, subject to the approval of the executive director.

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

(A) Permit holders who are subject to the permits by rule of Chapter 106 of this title (relating to Permits by Rule), as specified in paragraph (4) of this section shall maintain any records specified in the permit by rule.

(B) Permit holders who are subject to paragraph (7) of this section shall maintain a leaking-components log in accordance with §116.620(e)(2) of this title

**SUBCHAPTER G : FLEXIBLE PERMITS**

**§§116.710, 116.715, 116.721, 116.722, 116.750**

**STATUTORY AUTHORITY**

The amendments are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; and TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The amendments are also adopted under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere §382.061, which authorizes the commission to delegate permitting

authority to the executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

**§116.710. Applicability.**

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

(1) only one flexible permit may be issued at an account site;

(2) modifications to existing facilities covered by a flexible permit may be handled through the amendment of an existing flexible permit;

(3) permitting of a new facility may be handled through the amendment of a flexible permit; and

(4) a flexible permit may not cover sources at more than one account site.

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

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

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

**§116.715. General and Special Conditions.**

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

(b) A pollutant specific emission cap or multiple emission caps and/or individual emission limitations shall be established for each air contaminant for all facilities authorized by the flexible permit.

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

(1) Voiding of permit. A flexible permit or flexible permit amendment under this subchapter is automatically void if the holder fails to complete construction as specified in the flexible

permit. Upon request, the executive director may grant a one time 12-month extension of the date to complete construction. This section does not apply to physical or operational changes allowed without an amendment under §116.721 of this title (relating to Amendments and Alterations).

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

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

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

providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

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

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

(7) Maximum allowable emission rates. A flexible permit covers only those sources of emissions and those air contaminants listed in the table entitled "Emission Sources, Emissions Caps and Individual Emission Limitations" attached to the flexible permit. Flexible permitted sources are limited to the emission limits and other conditions specified in the table attached to the flexible permit.

(8) Emission cap readjustment. If a schedule to install additional controls is included in the flexible permit and a facility subject to such a schedule is taken out of service, the emission cap contained in the flexible permit will be readjusted for the period the unit is out of service to a level as if no schedule had been established. Unless a special provision specifies the method of readjustment of the emission cap, a permit alteration shall be obtained.

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

(10) Compliance with rules. Acceptance of a flexible permit by a permit applicant constitutes an acknowledgment and agreement that the holder will comply with all Rules, Regulations, and Orders of the commission issued in conformity with the TCAA and the conditions precedent to the

granting of the permit. If more than one state or federal rule or regulation or flexible permit condition are applicable, then the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated. Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the flexible permit.

(d) There may be additional special conditions attached to a flexible permit upon issuance or amendment of the permit. Such conditions in a flexible permit may be more restrictive than the requirements of this title.

**§116.721. Amendments and Alterations.**

(a) Flexible permit amendments. All representations with regard to construction plans and operation procedures in an application for a flexible permit, as well as any general and special provisions attached, become conditions upon which the subsequent flexible permit is issued. It shall be unlawful for any person to vary from such representation or flexible permit provision if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions, unless application is made to the executive director to amend the flexible permit in that regard and such amendment is approved by the executive director or commission. Applications to amend a flexible permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.711 of this title (relating to Flexible Permit Application).

(b) Flexible permit alterations.

(1) A flexible permit alteration is for any variation from a representation in a flexible permit application or a general or special provision of a flexible permit that does not require a flexible permit amendment.

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

(3) Flexible permit alterations shall not be subject to the requirements of Best Available Control Technology identified in §116.711(3) of this title.

(c) Changes not requiring an amendment or alteration. The following changes do not require an amendment or alteration, except that an amendment is required if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in a significant increase in emissions:

(1) a change in throughput; or

(2) a change in feedstock.

(d) Permit by rule under Chapter 106 of this title (relating to Permits by Rule) in lieu of permit amendment or alteration.

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

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

**§116.722. Distance Limitations.**

No flexible permit may be issued unless the distance and location restrictions found in §116.112 of this title (relating to Distance Limitations) are met.

**§116.750. Flexible Permit Fee.**

(a) Fees required. Any person who applies for a flexible permit or for an amendment to an existing flexible permit shall remit, at the time of application for such permit, a fee as set forth in subsection (b) of this section. Fees will not be charged for flexible permit alterations, changes of ownership, or changes of location of permitted facilities.

(b) Fee amounts. The fee to be remitted with a flexible permit application shall be based on the total annual allowable emissions from the permitted facility, group of facilities, or account for which the flexible permit is being sought. The fee shall be \$25 per ton with the minimum fee being \$450 and the maximum fee \$75,000. For flexible permit amendments, the fee shall be calculated based on \$25 per ton for the incremental emission increase with the minimum fee being \$450 and the maximum fee being \$75,000.

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

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

**SUBCHAPTER J : MULTIPLE PLANT PERMITS**

**§§116.1010, 116.1011, 116.1014, 116.1015, 116.1020, 116.1021, 116.1040,  
116.1041, 116.1050, 116.1060, 116.1070**

**STATUTORY AUTHORITY**

The new sections are adopted under Texas Health and Safety Code, TCAA, §382.05101, which authorizes the commission to establish a de minimis level of air contaminants for sources that does not require preconstruction authorization; TCAA, §382.051 and §382.05194, which authorize the commission to issue multiple plant permits and to adopt rules governing their issuance. The new sections are also adopted under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission with the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.0513, which authorizes the commission to establish and enforce permit conditions; §382.0514, which authorizes the commission to require sampling and monitoring; §382.0515, which requires permit applications which demonstrate compliance with state and federal statutes and rules; §382.0518, which requires permits to prior to construction or modification; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which will not make a significant contribution of air contaminants to the atmosphere; §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; §382.061, which authorizes the commission to delegate permitting authority to the

executive director; §382.062, which authorizes the commission to adopt, charge, and collect fees for permits; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

**§116.1010. Applicability.**

(a) A person may obtain a multiple plant permit for existing facilities subject to TCAA, §382.0518 or §382.0519 at multiple plant sites that are owned or operated by the same person or persons under common control if:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing grandfathered facilities or for facilities authorized under Subchapter H of this chapter (relating to Voluntary Emission Reduction Permits), the rates that would be authorized under Subchapter H of this chapter; and

(2) the emissions from the facilities will not contravene the intent of the TCAA, including protection of the public's health and physical property.

(b) A permit issued under this subchapter may not authorize emissions from any facility that exceeds that facility's highest historic annual rate, if the facility is grandfathered, or the levels authorized in the facility's most recent permit, if the facility is permitted. The highest historic annual rate would be determined by either of the following:

(1) using data that shows the maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971 for 12 consecutive months, including any increases authorized by a permit by rule; or

(2) using data related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc.) as appropriate, which are selected by the applicant and agreed upon by the executive director, to reasonably approximate the actual annual emission rate from any operational year.

(c) Emissions control equipment previously installed at a facility permitted under this chapter may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

**§116.1011. Multiple Plant Permit Application.**

(a) An application for a multiple plant permit must include a completed Form PI-1M Multiple Plant Permit Application. The Form PI-1M must be signed by an authorized representative of the applicant. The Form PI-1M specifies additional support information which must be provided before the application is deemed complete. In order to be granted a multiple plant permit, the owner or operator of the existing facilities shall submit the following information to the commission:

(1) information to demonstrate compliance with applicable conditions of §116.711 of this title (relating to Flexible Permit Application);

(2) for grandfathered facilities, as defined in §116.10(6) of this title (relating to General Definitions) for which a multiple plant permit application is filed prior to September 1, 2001, the information required by §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application) solely for the purpose of determining the aggregate emission rate of air contaminants to be authorized under the permit;

(3) for permitted facilities, the relevant permit;

(4) relevant information, indicating that the emissions from the facilities will not contravene the intent of the TCAA, including protection of the public's health and physical property.

(5) information necessary to calculate the cost of public notice under §116.1040 of this title (relating to Multiple Plant Permit Public Notice).

(b) Grandfathered facilities which do not apply for a multiple plant permit prior to September 1, 2001 must first obtain a permit under Subchapter B of this chapter (relating to New Source Review Permits) before they are eligible to be included in a multiple plant permit.

**§116.1014. Application Review Schedule.**

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

**§116.1015. General and Special Conditions.**

(a) Multiple plant permits may contain general and special conditions, including special conditions which provide emission limitation for each facility and which specify the aggregate rate of emissions of air contaminants. The holders of a multiple plant permit shall comply with any and all such conditions.

(b) Holders of multiple plant permits shall comply with §116.115 of this title (relating to General and Special Conditions), as applicable.

**§116.1020. Modifications.**

The owner or operator planning the modification of a facility permitted under a multiple plant permit must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification.

**§116.1021. Amendments and Alterations.**

(a) Multiple plant permit amendments. All representations in an application for a multiple plant permit, as well as any general and special conditions contained in the permit, become conditions upon which the subsequent multiple plant permit is issued. It shall be unlawful for any person to vary from such representation or condition if the change is a modification, a change in the method of control of emissions, or will result in an increase in emissions, unless application is made to the commission to amend the multiple plant permit in that regard and such amendment is approved by the commission. Applications to amend a multiple plant permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.116(b) of this title (relating to Changes to Facilities).

(b) Multiple plant permit alterations.

(1) A multiple plant permit alteration is for any variation from a representation in a multiple plant permit application or a general or special condition of a multiple plant permit that does not require a multiple plant permit amendment.

(2) All multiple plant permit alterations which may involve a change in a general or special condition contained in the permit, or affect control equipment performance must receive prior approval by the executive director. The executive director shall be notified in writing of all other multiple plant permit alterations within ten days of implementing the change, unless the permit provides for a different method of notification. Any multiple plant permit alteration request or notification shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.1011 of this title, including the protection of public health and welfare. The appropriate commission regional office and any local air pollution program having jurisdiction shall be provided copies of all multiple plant permit alteration documents.

(c) Permit by rule under Chapter 106 of this title (relating to Permits by Rule) in lieu of permit amendment or alteration.

(1) Notwithstanding subsections (a) or (b) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for a permit by rule under Chapter 106 of this title unless prohibited by permit provision as provided in §116.1015 of this title (relating to

General and Special Conditions). All such changes to a permitted facility authorized by Chapter 106 of this title, shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

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

**§116.1040. Multiple Plant Permit Public Notice.**

The commission will publish notice of a proposed multiple plant permit in the *Texas Register* and in a newspaper of general circulation in the area to be affected. If the multiple plant permit will affect the entire state, the commission will publish notice in *Texas Register* and in the daily newspaper of largest circulation in Dallas and Houston and in other regional newspapers, as appropriate. The notice will include relevant information required by §39.411 of this title (relating to Text of Public Notice) and will be published not later than the 30th day before the date the commission issues the multiple plant permit. Applicants must publish notice of a proposed multiple plant permit amendment consistent with §116.116(b)(4) of this title (relating to Changes to Facilities).

**§116.1041. Multiple Plant Permit Public Comment Procedures.**

(a) The commission will hold a public meeting to provide an additional opportunity for public comment. The commission will give notice of a public meeting under this section as part of the notice described in §116.1040 of this title (relating to Multiple Plant Permit Public Notice) not later than the 30th day before the date of the meeting.

(b) If the commission receives public comment related to the issuance of a multiple plant permit for existing facilities, the commission will issue a written response to the comments at the same time the commission issues or denies the permit. The response will be made available to the public, and the commission will mail the response to each person who made a comment.

(c) Applications for multiple plant permit issuance, amendment, or revocation which are filed before September 1, 2001, are not subject to Texas Government Code, Chapter 2001.

**§116.1050. Multiple Plant Permit Application Fee.**

Any person who applies for a multiple plant permit shall remit, at the time of application for such permit, a fee of \$450 plus the estimated public notice cost for the permit consistent with the public notice requirements in §116.1040 of this title (relating to Multiple Plant Permit Public Notice).

(1) Fees will not be charged for multiple plant permit alterations, changes of ownership, or changes of location of permitted facilities.

(2) Fees must be paid at the time an application for a permit is submitted. If the applicant withdraws the application for the permit prior to initiation of the public notice process by the commission, the estimated cost of public notice will be refunded to the applicant. No fees will be refunded after a deficient application has been voided or after initiation of the public notice process by the commission.

**§116.1060. Multiple Plant Permit Renewal.**

Multiple plant permits shall be renewed in accordance with Subchapter D of this chapter (relating to Permit Renewals).

**§116.1070. Delegation.**

The commission may delegate to the executive director any authority in this subchapter.