

Rule Interpretation Memos for 30 TAC 116

- ! [Determination of applicability of 30 TAC Chapter 116 to jet engine test cells also known as "hush houses"](#) [January 30, 1998]
- ! [Typographical error in citation 112.322 and 116.132 regarding bi-lingual notice.](#) [June 22, 1998]
- ! [Determine if 30 TAC §116.110\(a\)\(2\)\(B\) should reference 30 TAC Admin Code Chapter 321, Subpart B, instead of Subchapter K.](#) [April 29, 1999]
- ! [Determine the applicability of a power plant removed from a locomotive and than tested.](#) [April 29, 1999]
- ! [Typographical error in §116.116\(c\)\(4\) and \(c\)\(5\)](#) [August 4, 1999]
- ! [Per §116.133\(c\), clarification of thoroughfare](#) [July 13, 1999]
- ! [**Revision** - For Purposes of 30 TAC Chapters 101, 106, 116, 117, & 122 are portable or transportable engines considered a stationary source?](#) [June 2, 2003]
- ! [Applicability of 30 TAC Chapter 116 to dockside marine vessel emissions](#) [December 12, 2000]
- ! [Applicability of Prevention of Significant Deterioration \(PSD\), Nonattainment \(NA\), and Title V permit requirements to dockside marine vessel emissions](#) [December 12, 2000]

Last Modified: June 2, 2003

Rule Interpretation Summary Form

Determination of applicability of 30 TAC Chapter 116 to jet engine test cells also known as "hush houses"	CODE #: R6-110.001
	January 30, 1998

REQUEST:

Rule/Regulation Citation(s):	Federal Rule: <input type="checkbox"/> State Regulation: <input checked="" type="checkbox"/>
	Description:
30 TAC Chapter 116 § 116.110(a)	Subchapter B: New Source Review Permits Applicability
Interpretation Request:	
Determination of applicability of Title 30 Texas Administrative Code § 116.110(a) (30 TAC § 116.110[a]) to jet engine test cells.	

DETERMINATION:

Determination:
<p>There are three distinct types of jet engine testing operations which could be subject to 30 TAC § 116.110(a). The following is an applicability determination for these types of operations:</p> <ol style="list-style-type: none"> A. The first type is jet engines which are tested while attached to their aircraft. These are considered mobile sources and not subject to 30 TAC § 116.110(a). B. The second type includes engines removed from the aircraft and tested in the open. This type of unit is commonly referred to as "jet engine test cells." These units meet the definition of a facility and a stationary source. Therefore, these types of units are required to obtain authorization by permit or exemption to operate. C. The third type includes engines removed from the aircraft and tested in a structure or building. These structures or buildings and the equipment operated within them (jet engine test cells) constitute a facility and, therefore, should be considered stationary sources and require authorization by permit or exemption. <p>It is important to note that under certain circumstances the building or enclosure may contain both stationary and mobile sources, but only the stationary sources should be considered for demonstrations of compliance with 30 TAC Chapter 116.</p>

Bibliography:

Current TNRC Rules: Chapters 101, 106, 116, and 122

Current Texas Health and Safety Code, Subtitle C. Air Quality

Review of past memorandums and letters concerning jet engine test cells.

Rule Interpretation Summary Form

Typographical error in citation 112.322 and 116.132 regarding bi-lingual notice.	CODE #: R12-322.001 and R6-132.001
	June 22, 1998

REQUEST:

Rule/Regulation Citation(s):	Federal Rule: <input type="checkbox"/> State Regulation: <input checked="" type="checkbox"/>
30 TAC Chapter 122 § 122.322(a) § 122.322(a)(1) § 122.322(a)(8) § 122.322(b)	Description: Subchapter D: Public Announcement, Public Notice, Affected State Review, Notice and Comment Hearing, Notice of Proposed Final Action, EPA Review, and Public Petition
30 TAC 116 § 116.132(c)	Subchapter B: New Source Review Permits, Alternate Language Public Notice Requirements
Interpretation Request:	
<p>Question 1. Are the Texas Education Code reference citations of Title 19 Texas Administrative Code § 89.2(a) [19 TAC 89.2(a)] and 19 TAC § 89.2(g) in the above mentioned subsections and paragraphs of 30 TAC Chapters 122 and 116 incorrect? Are 19 TAC § 89.1205(a) and 19 TAC § 89.1205(g) the correct citations for bilingual education requirements ? Also, is the reference to Texas Education Code § 21.109 correct?</p> <p>Question 2. In addition, are the requirements for individual schools triggering the requirements (instead of the school district) correct as stated in 30 TAC § 122.322(a) and 30 TAC § 116.132(c)?</p>	

DETERMINATION:

Determination:
<p>Question 1. It is the Rule Interpretation Team's (RIT's) opinion that the correct citations in 30 TAC Chapters 122 and 116 for bilingual education should be 19 TAC §§ 89.1205(a), 89.1205(g), and Texas Education Code § 29.053.</p> <p>Question 2. The requirements specifying that the individual schools trigger the requirement for bilingual notice in 30 TAC § 122.322(a) and 30 TAC § 116.132(c) are correct and are consistent with the statutory requirements. Bilingual public notice requirements apply if the nearest elementary school or the nearest middle school provides a bilingual education program or has waived out of a required bilingual education program.</p>

Bibliography:

19 TAC § 89.1205 (1997).

Texas Education Code § 29.053 (Vernon 1996).

Texas Health & Safety Code § 382.056 (Vernon Supp. 1998).

Air Rule Interpretation Summary Form

Code Number	R6-110.002
April 28, 1999	

Rule/Regulation Citation(s):	Federal Rule: <input type="checkbox"/> State Regulation: <input checked="" type="checkbox"/>
30 Tex. Admin. Code Chapter 116 § 116.110(a)(2)(B)	Description: Subchapter B: New Source Review Permits Division 1: Permit Application
Interpretation Request:	
Title 30 Texas Administrative Code (Tex. Admin. Code) § 116.110(a)(2)(B) requires that before actual work is begun on a facility, the conditions for a standard permit under the requirements in 30 Tex. Admin. Code Chapter 321, Subchapter K, relating to Concentrated Animal Feeding Operations (CAFOs) must be satisfied. However, the CAFO rules have been moved to 30 Tex. Admin. Code Chapter 321, Subchapter B. Should 30 Tex. Admin. Code § 116.110(a)(2)(B) reference 30 Tex. Admin. Code Chapter 321, Subchapter B, instead of Subchapter K?	
Determination:	
In May 1998, 30 Tex. Admin. Code Chapter 321, Subchapter K was set aside by the 353d Judicial District of Travis County due to procedural defects. On August 19, 1998, 30 Tex. Admin. Code Chapter 321, Subchapter B was adopted to replace Subchapter K. Therefore, 30 Tex. Admin. Code § 116.110(a)(2)(B) should reference 30 Tex. Admin. Code Chapter 321, Subchapter B, instead of Subchapter K.	

Bibliography:

Title 30 Tex. Admin. Code Chapter 116, Subchapter B: New Source Review Permits; Division 1: Permit Applications; 30 Tex. Admin. Code § 116.110(a)(2)(B) [Effective date: December 10, 1998]

Title 30 Tex. Admin. Code Chapter 321, Subchapter B: Concentrated Animal Feeding Operations [Effective date: September 18, 1998]

23 Tex. Reg. 9165-9507 (1998). [September 11, 1998]

Air Rule Interpretation Summary Form

Code Number	R6-110.004
April 28, 1999	

Rule/Regulation Citation(s):	Federal Rule: <input type="checkbox"/> State Regulation: <input checked="" type="checkbox"/>
30 Tex. Admin. Code Chapter 116, § 116.110(a)	Description: Subchapter B: New Source Review Permits Division 1: Permit Application
Interpretation Request:	
Determination of applicability of Title 30 Texas Administrative Code (Tex. Admin. Code) § 116.110(a) to locomotive load/smoke test facilities. The facility would not be enclosed in a building and the load/smoke test equipment would fit over the locomotive smokestack, so as not to restrict or control the emissions in any way.	
Determination:	
Power plants which are tested while attached to a locomotive are considered to be part of a mobile source and not subject to 30 Tex. Admin. Code Chapter 116. This would apply even if the load testing is conducted in a building or structure.	
In the event that the power plant is removed from the locomotive and then tested, this power plant would be considered to meet the definition of facility in 30 Tex. Admin. Code § 116.10 because it would constitute a stationary source.	

Bibliography:

Interpretation/Opinion R6-110.001 [January 30, 1998].

Current TNRCC Rules: 30 Tex. Admin. Code Chapters 101, 106, 111, 116, and 122.

Current Texas Health and Safety Code, Subtitle C. Air Quality.

Air Rule Interpretation Summary Form

Code Number	R6-116.001
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Typographical error in §116.116(c)(4) and (c)(5)	August 4, 1999
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Rule/Regulation Citation(s):	Federal Rule: <u> </u> State Regulation: <u> X </u>
30 Tex. Admin. Code Chapter 116 §§ 116.116(c)(4) and (c)(5)	Description: Subchapter B: New Source Review Permits Division 1: Permit Application
Interpretation Request:	
Title 30 Texas Administrative Code (Tex. Admin. Code) §§ 116.116(c)(4) and (c)(5) reference 30 Tex. Admin. Code § 116.111(3), yet 30 Tex. Admin. Code § 116.111(3) does not exist. Is the correct citation 30 Tex. Admin. Code § 116.111(2)(C)?	
Determination:	
The reference to 30 Tex. Admin. Code § 116.111(3) in 30 Tex. Admin. Code §§ 116.116(c)(4) and (c)(5) should instead be to 30 Tex. Admin. Code § 116.111(2)(C). Therefore, 30 Tex. Admin. Code § 116.116(c)(4) should read: “A request for a permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator’s previous demonstration of compliance with the requirements of § 116.111(2)(C) of this title.” Also, 30 Tex. Admin. Code § 116.116(c)(5) should read: “Permit alterations are not subject to the requirements §116.111(2)(C) of this title.”	

Bibliography:

Title 30 Tex. Admin. Code Chapter 116, Subchapter B: New Source Review Permits; Division 1: Permit Applications; § 116.111 and § 116.116. [Effective date: March 21, 1999]

Title 30 Tex. Admin. Code Chapter 116, Subchapter B: New Source Review Permits; Division 1: Permit Applications; § 116.111 and § 116.116. [Effective date: December 10, 1998]

Title 30 Tex. Admin. Code Chapter 116, Subchapter B: New Source Review Permits; Division 1: Permit Applications; § 116.111 and § 116.116. [Effective date: July 8, 1998]

Title 30 Tex. Admin. Code Chapter 116, Subchapter B: New Source Review Permits; Division 1: Permit Applications; § 116.111 and § 116.116. [Effective date: April 7, 1998]

Please note, in the event that an external customer feels that this rule interpretation is in error or a source of information has been overlooked which would change the determination, a request for reconsideration may be submitted. Requests must be submitted on a Reconsideration Process Form which is available at the TNRCC's homepage: <http://www.tnrcc.state.tx.us/air/opd/rimhmpg.htm>, or from any of the air rule interpretation team members.
[AOPDG95A/12410-v2]

Air Rule Interpretation Summary Form

Code Number	R6-133.001
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Per §116.133(c), clarification of thoroughfare	July 13, 1999
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Rule/Regulation Citation(s):	Federal Rule: <input type="checkbox"/> State Regulation: <input checked="" type="checkbox"/>
30 Tex. Admin. Code Chapter 116 § 116.133(c)	Description: Subchapter B: New Source Review Permits Division 3: Public Notification and Comment Procedures
Interpretation Request:	
Under Title 30 Texas Administrative Code (Tex. Admin. Code) § 116.133, signs must be posted at the site of a proposed facility during a permit application. According to 30 Tex. Admin. Code § 116.133(c), these signs “must be located within 10 feet of each (every) property line paralleling a street or other public thoroughfare.” Does a river constitute a thoroughfare?	
Determination:	
Based on long-standing Texas Natural Resource Conservation Commission (TNRCC) practice and the dictionary definition of the term “thoroughfare,” Texas water bodies (lakes, rivers, streams) should not be considered public thoroughfares for purposes of determining sign posting requirements under 30 Tex. Admin. Code § 116.133(c).	

Bibliography:

Texas Health & Safety Code Chapter 382 (1998).

Title 30 Tex. Admin. Code Chapter 116 (1998) [July 8, 1998].

Evaluation of Testimony for Public Hearing [March 29, 1994] Regarding Bilingual Public Notification for Permit Applications and Permit General Conditions for 30 Tex. Admin. Code Chapter 101 and 116. [Effective: August 16, 1994].

Please note, in the event that an external customer feels that this rule interpretation is in error or a source of information has been overlooked which would change the determination, a request for reconsideration may be submitted. Requests must be submitted on a Reconsideration Process Form which is available at the TNRCC’s homepage: <http://www.tnrcc.state.tx.us/air/opd/rimhmpg.htm>, or from any of the air rule interpretation team members.

[AOPDG95A/12182-v2]

Air Rule Interpretation Summary Form

Code Number	R01-211.003 R06-1.001 R6-110.003 R7-201.003 R12-10.004
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Revision - For purposes of 30 TAC Chapters 101, 106, 116, 117, & 122 portable or transportable engines considered a stationary source?	June 2, 2003
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Rule/Regulation Citation(s):	Federal Rule: <u> </u> State Regulation: <u> X </u>
	Description:
30 TAC §§ 101.211, 106.1, 116.110(a), 117.201(3), and 122.10	Chapter 101, Subchapter F: Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities Chapter 106, Subchapter A: General Requirements Chapter 116, Subchapter B: New Source Review Permits Chapter 117, Subchapter B: Combustion at Existing Major Sources Commercial, Institutional, and Industrial Sources Chapter 122, Subchapter A: Definitions
Interpretation Request:	
For purposes of 30 Texas Administrative Code (TAC) Chapters 106, 116, 117, and 122, is an engine that is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another, considered a stationary source? Are portable or transportable engines located at a single point for less than 12 consecutive months exempt from the maintenance notification requirements of 30 TAC § 101.211?	
Determination:	

Title 30 TAC Chapter 106 and 116: A portable or transportable engine which remains or will remain at a single point or location for less than or equal to 12 consecutive months is not considered a stationary source and no authorization under 30 TAC Chapters 106 or 116 would be required. If a portable or transportable engine remains or will remain at a single point or location for more than 12 consecutive months, it is considered stationary and would be subject to 30 TAC Chapters 106 or 116 requirements.

Title 30 TAC Chapter 117: A portable or transportable engine which remains or will remain at a single point or location for less than or equal to 12 consecutive months is not considered a stationary source and will not be subject to Chapter 117. If a portable or transportable engine remains or will remain at a single point or location for more than 12 consecutive months, it would meet the § 117.10 definition of a stationary internal combustion engine and would therefore be subject to Chapter 117.

Title 30 TAC Chapter 122: If a portable or transportable engine remains or will remain at a single point or location for less than or equal to 12 consecutive months, it meets the definition of a nonroad engine and is excluded by the Chapter 122 definition of stationary source. If the portable or transportable engine remains at a single point or location for more than 12 consecutive months, it would meet the definition of a stationary source and must be included when determining applicability of the Federal Operating Permit Program.

(Continued)

Title 30 TAC § 101: Emissions from the exhaust of a portable or transportable engine which meets the 40 CFR § 89.2 definition of nonroad engine, are not subject to 30 TAC § 101.211 notification requirements. However, emissions resulting from maintenance done to the engine (from activities such as degreasing or painting) would be potentially unauthorized emissions and may be subject to applicable § 101.211 requirements. Also, non-engine emissions generated by the maintenance activity (such as volatile organic compound (VOC) emissions resulting from the pumping of VOC liquid powered by a portable/transportable engine) remain subject to applicable § 101.211 notification requirements.

Please note, for these determinations a single point or location means a specific location at a site not just located somewhere at the entire site. In addition, any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period.

Bibliography:

30 TAC Chapter 101 (2002). [Sept. 12, 2002]

30 TAC Chapter 106 (2002). [Dec. 11, 2002]

30 TAC Chapter 117 (2003). [Jan. 17, 2003]

30 TAC Chapter 116 (2003). [Jan. 8, 2003]

30 TAC Chapter 122 (2002). [Dec. 11, 2002]

Evaluation of Testimony for proposed and adopted rule changes to Chapter 117 (1993). [Effective date: June 9, 1993]

40 CFR § 89.2 (2001). [July 1, 2001]

Federal Clean Air Act Amendments of 1990, §§ 111(a)(3), 209, 216, 302(z).

Air RIT Rule Interpretation/Opinion Code #: R01-211.001/R06-1.001/R6-110.003/R7-201.003/R12-10.004

Please note, in the event that an external customer feels that this rule interpretation is in error or a source of information has been overlooked which would change the determination, a request for reconsideration may be submitted. Requests must be submitted on a Reconsideration Process Form which is available at the TCEQ's homepage: <http://www.tnrc.state.tx.us/permitting/airperm/opd/rimhmpg.htm>, or from any of the air rule interpretation team members.

Air Rule Interpretation Summary Form

Code Number	R6-110.005
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Applicability of 30 TAC Chapter 116 to dockside marine vessel emissions	December 12, 2000
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Rule/Regulation Citation(s):	Federal Rule: <input type="checkbox"/> State Regulation: <input checked="" type="checkbox"/>
	Description:
30 Tex. Admin. Code Chapter 116, § 116.110(a)	Subchapter B: New Source Review Permits Applicability
Interpretation Request:	
What requirements of 30 Texas Administrative Code (Tex. Admin. Code) Chapter 116 are applicable to dockside marine vessel emissions?	
Determination:	
Emissions from dockside marine vessel activities (loading, unloading, cleaning, degassing, abrasive blasting and painting) that are operated by the owner or operator of onshore facilities are subject to all the requirements of 30 Tex. Admin. Code Chapter 116.	
All applications declared administratively complete after September 1, 2001 will be required to undergo a full state New Source Review (NSR) for dockside vessel emissions.	

Bibliography:

Title 30 Tex. Admin. Code Ch. 116 (Sept. 4, 2000).

Title 30 Tex. Admin. Code Ch. 101 (Sept. 4, 2000).

Scurry v. Texas Air Control Bd., 622 S.W.2d 155 (Tex. Civ. App.–Austin 1981, writ ref'd n.r.e.).

Clean Air Act, 42 U.S.C. § 7602(z) (West 1997) (“stationary source” defined).

Tex. Health & Safety Code Ann. § 382.003(6) (Vernon 1992) (“facility” defined).

Memorandum from Laura Rowan, Staff Attorney, Office of Legal Services, to Victoria Hsu, Director, New Source Review Division (Dec. 12, 1995) (“TNRCC Authority to Regulate Air Contaminant Emissions from Marine Vessel Activities or Processes Other than Vessel Propulsion”).

TNRCC Commission Worksession backup material (Oct. 20, 2000).

Please note, in the event that an external customer feels that this rule interpretation is in error or a source of information has been overlooked which would change the determination, a request for reconsideration may be submitted. Requests must be submitted on a Reconsideration Process Form which is available at the TNRCC’s homepage: <http://www.tnrcc.state.tx.us/air/opd/rmhmpg.htm>, or from any of the air rule interpretation team members.

Air Rule Interpretation Summary Form

Code Number	R6-150.001 R6-160.001 R12-10.006
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Applicability of Prevention of Significant Deterioration (PSD) Nonattainment (NA), and Title V permit requirements to dockside marine vessel emissions	December 12, 2000
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Rule/Regulation Citation(s):	Federal Rule: ___ State Regulation: <u>X</u> Description:
30 Tex. Admin. Code § 116.150(a)	Subchapter B: New Source Review Permits Division 5: Nonattainment Review
30 Tex. Admin. Code § 116.160(a)	Subchapter B: New Source Review Permits Division 6: Prevention of Significant Deterioration Review
30 Tex. Admin. Code § 122.10	Subchapter A: Definitions

Interpretation Request:

Are dockside marine vessel emissions included in applicability determinations for Prevention of Significant Deterioration (PSD), Nonattainment (NA), and Title V permit requirements?

Determination:

Dockside vessel loading, unloading, cleaning, degassing, abrasive blasting and painting that serve the purpose of and are under the control of the onshore facilities must be included in applicability determinations for PSD, NA, and Title V permit requirements.

Title 30 Texas Administrative Code (Tex. Admin. Code) Chapter 116 [§§ 116.12(4) and 116.160(a)] inadvertently cross-references or incorporates the vacated 1982 PSD and NA rules; therefore, we are initiating rulemaking to correct that cross-reference or incorporation. Please note, although our state rule contains incorrect citations, the federal requirements are required to be implemented as established by 1980 federal rules. Therefore this rule interpretation does not change the PSD or NA requirement but only clarifies the continued requirement to comply with the 1980 federal rules.

However, since the issue was not explicitly addressed in Title 40 Code of Federal Regulations (C.F.R.) Part 70 previously, pursuant to 30 Tex. Admin. Code § 122.130(c)(2), the applicant has one year from the date of this rule interpretation to submit an application for those sites that were not previously considered major but, based on inclusion of the dockside vessel emissions, now would be major.

Bibliography:

45 Fed. Reg. 52,676, 52,696 (1980) (published Aug. 7, 1980) (Nonattainment and PSD rule).

46 Fed. Reg. 36,695 (1981) (published July 15, 1981) (EPA stay of Aug. 7, 1980 regulations).

46 Fed. Reg. 61,613 (1981) (published Dec. 17, 1981) (EPA stay extension and proposed revised PSD and NA regulations).

47 Fed. Reg. 27,554 (1982) (published June 25, 1982) (final PSD and NA regulation excluding marine vessel emissions).

Natural Resources Defense Council v. United States EPA, 725 F.2d 761 (D.C. Cir. 1984).

54 Fed. Reg. 52,823 (1989) (published Dec. 22, 1989) (EPA proposal to approve Texas PSD program except for marine vessels).

Memorandum from John Calcagni, U.S. EPA, to Ken Waid (Jan. 8, 1990).

Memorandum from Bill Zeis, Staff Attorney, TACB Legal Division, to Lawrence Pewitt, Director, TACB Permits Program (Aug. 7, 1990) (“PSD Applicability Determination Concerning Vessel Emissions”).

U.S. EPA, NSR Workshop Manual (1990) (Section II.B.4., Secondary Emissions).

57 Fed. Reg. 28,093 (1992) (published June 24, 1992) (EPA final approval of Texas PSD program except for marine vessels).

Memorandum from David Duncan, Senior Attorney, TNRCC Legal Division, to Jeff Saitas, Deputy Director, TNRCC Office of Air Quality (May 4, 1998).