

**SUBCHAPTER H: PERMITS FOR GRANDFATHERED FACILITIES**  
**DIVISION 1: GENERAL APPLICABILITY**  
**§§116.770 - 116.773**  
**Effective February 19, 2004**

**§116.770. Requirement to Apply or Register.**

(a) The owner or operator of a grandfathered facility must apply for a permit to operate that facility under this chapter, qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule), or submit a notice of shutdown before September 1, 2003 for facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions), and before September 1, 2004 for facilities located in the West Texas region as defined in §101.330 of this title or El Paso County.

(b) A reciprocating internal combustion engine that is subject to the requirement to obtain a pipeline facilities permit and to a mass emissions cap as established by commission rule is considered permitted with respect to all air contaminants if the facility is:

(1) located in an area designated as a nonattainment area for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area by June 20, 2003.

(c) The owner or operator of a reciprocating internal combustion engine that is considered permitted under subsection (b) of this section must submit a registration to the commission on or before July 1, 2004, which must include Form PI-1G, Grandfathered Facility Permit Application.

Adopted January 28, 2004

Effective February 19, 2004

**§116.771. Implementation Schedule for Additional Controls.**

(a) If the installation of additional controls is required for a grandfathered facility to meet an emission limit for a pollutant, the permit shall specify an implementation schedule for such additional controls. Any such schedule shall require installation and operation of controls before March 1, 2007 for facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions) or before March 1, 2008 for facilities located in the West Texas region as defined in §101.330 of this title or El Paso County.

(b) The owner or operator of a grandfathered facility that does not obtain a permit within 12 months of receipt by the commission of an administratively complete application for a permit may petition the commission for an extension of the time period for the installation of controls under

subsection (a) of this section. The commission may grant not more than one extension for a facility, for an additional period of not more than 12 months, if the commission finds good cause for the extension.

Adopted May 22, 2002

Effective June 12, 2002

**§116.772. Notice of Shutdown.**

(a) The owner or operator of a grandfathered facility who chooses to shut the facility down rather than obtain a permit under this chapter or qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule), shall notify the executive director in writing by completing Form PI-1GSD, Notice of Shutdown, prior to the deadlines specified in §116.770(a) or §116.774 of this title (relating to Requirement to Apply; and Eligibility for Small Business Stationary Source Permits). The owner or operator of a grandfathered facility who submits a Form PI-1GSD, Notice of Shutdown, prior to the deadlines specified in §116.770(a) or §116.774 of this title shall cease emitting air contaminants by:

(1) March 1, 2007, if the facility is not eligible for a small business stationary source permit and is located in the East Texas region as defined in §101.330 of this title (relating to Definitions); or

(2) March 1, 2008, if the facility is eligible for a small business stationary source permit or is located in the West Texas region as defined in §101.330 of this title or El Paso County.

(b) The owner or operator of a grandfathered facility who applies for a permit prior to the deadlines specified in §116.770(a) or §116.774 of this title, but prior to permit issuance, decides to shut the facility down must submit a Form PI-1GSD, Notice of Shutdown, prior to withdrawal of the permit application and must cease emitting air contaminants by the date specified in subsection (a)(1) or (2) of this section.

(c) The owner or operator of a facility that has been shut down and for which a Notice of Shutdown has been submitted must obtain the proper authorization under this chapter or Chapter 106 of this title prior to operating the facility.

(d) The Notice of Shutdown shall include, as a minimum, an identification of the facility to be shut down, the date the owner or operator intends to cease operating the facility, and an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate.

Adopted January 28, 2004

Effective February 19, 2004

**§116.773. Compliance History.**

For all permit reviews under this subchapter, compliance history reviews are required under Chapter 60 of this title (relating to Compliance History).

Adopted August 7, 2002

Effective August 29, 2002

**DIVISION 2: SMALL BUSINESS STATIONARY SOURCE PERMITS,  
PIPELINE FACILITIES PERMITS, AND EXISTING FACILITY PERMITS**  
**§§116.774 - 116.781, 116.783, 116.785 - 116.788, 116.790**  
**Effective February 19, 2004**

**§116.774. Eligibility for Small Business Stationary Source Permits.**

(a) The owner or operator of a grandfathered facility located at a small business stationary source, as defined in TCAA, §382.0365(h), and which is not required to report to the commission under TCAA, §382.014 may apply for a small business stationary source permit before September 1, 2004.

(b) The deadlines contained in §116.770 of this title (relating to Requirement to Apply) and §116.771 of this title (relating to Implementation Schedule for Additional Controls) do not apply to facilities eligible to apply for a small business stationary source permit. Any grandfathered facility, including any facility for which the owner or operator has submitted a notice of shutdown under §116.772 of this title (relating to Notice of Shutdown), located at a small business stationary source may not emit air contaminants on or after March 1, 2008, unless the facility is permitted, or has a permit application pending under this chapter, or has a registration or pending registration for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

(c) Applications for a small business stationary source permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(d) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the small business stationary permit and for complying with this subchapter.

Adopted May 22, 2002

Effective June 12, 2002

**§116.775. Eligibility for Pipeline Facilities Permits.**

(a) The owner or operator of a grandfathered reciprocating internal combustion engine or group of engines that is a part of processing, treating, compression, or pumping facilities connected to or part of a gathering or transmission pipeline may apply for a pipeline facilities permit.

(b) Applications for a pipeline facilities permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(c) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the pipeline facilities permit and for complying with this subchapter.

(d) The owner or operator of more than one grandfathered reciprocating internal combustion engine may apply for a pipeline facilities permit for a single grandfathered reciprocating internal combustion engine or a group of the grandfathered reciprocating internal combustion engines connected to or part of a gathering or transmission pipeline.

Adopted May 22, 2002

Effective June 12, 2002

**§116.776. Emissions Reductions Incentives for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region.**

(a) Emissions reductions incentives will be made available to eligible facilities through a grant program administered under this section and Chapter 14 of this title (relating to Grants).

(b) Eligible facilities. Owners or operators of grandfathered reciprocating internal combustion engines are eligible for reimbursement of a portion of the cost of controls from the emissions reductions incentive account based on the following eligibility criteria and grant program requirements.

(1) The owner or operator of grandfathered reciprocating internal combustion engine or engines associated with pipelines must reduce the hourly emissions rate of nitrogen oxides (NO<sub>x</sub>), expressed in terms of grams per brake horsepower-hour, by at least 50%.

(2) The grandfathered reciprocating internal combustion engine or engines must be located in the East Texas region as defined in §101.330 of this title (relating to Definitions).

(3) The owner or operator must apply for and receive a pipeline facilities permit or replace the grandfathered reciprocating internal combustion engine with an engine with a NO<sub>x</sub> emission rate which is at least 50% lower than the emission rate of the grandfathered engine or an electric engine.

(4) The project to control emissions must be initiated on or before September 1, 2006.

(5) The project to control emissions must be completed before March 1, 2007.

(6) The owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the emissions reductions incentives account is sought, must enter a contract with the commission in accordance with a request for proposals (grant applications) under Chapter 14 of this title.

(7) The owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the emissions reductions incentives account is sought, must identify, at the time the permit application is filed, the facilities for which reimbursement is requested.

(8) The owner or operator who elects to replace a grandfathered reciprocating internal combustion engine with an electric engine must submit a Registration of Replacement of a Grandfathered Reciprocating Internal Combustion Engine with an Electric Engine. The owner or operator who elects to achieve the 50% reduction in NO<sub>x</sub> emissions rate by replacing a grandfathered engine or engines with new combustion engines must obtain authorization for the new engines under this chapter or Chapter 106 of this title (relating to Permits by Rule).

(9) The emissions controls identified in the permit must be operating before the executive director can authorize payment from the emissions reductions incentives account.

(10) For grandfathered reciprocating internal combustion engines replaced by electric engines or engines with a NO<sub>x</sub> emission rate which is at least 50% lower than the emission rate of the grandfathered engine, the replacement engine must be installed and operating and the grandfathered reciprocating internal combustion engine must be permanently shut down before the executive director can authorize payment from the emissions reductions incentives account.

(11) Facilities required by any other state or federal law to make reductions in emissions of NO<sub>x</sub> are not eligible for reimbursement.

(12) A person or an affiliate of a person who pays or contributes money to the emissions reductions incentives account is ineligible to receive money from the account.

(c) Limitations on reimbursement. The commission may reimburse the owner or operator of a grandfathered reciprocating internal combustion engine or engines for no more than the cost associated with achieving emissions reductions between 30% and 50% of the engine's hourly emissions rate of NO<sub>x</sub> before the addition of controls. The commission may distribute less than the amount calculated in this manner based on the amount of money contributed to the fund and the incentive criteria for distribution outlined in subsection (d) of this section.

(d) Incentive criteria. The commission will distribute any money in the fund based on the following incentive criteria:

(1) when the reductions are actually achieved; and

(2) if the executive director determines that a cap is appropriate in order to maximize equitable distribution of the fund, a cap on the amount to be reimbursed for each engine.

(e) Verification of emissions reductions. Prior to reimbursement from the emissions reductions incentives account, the owner or operator of each grandfathered reciprocating internal combustion engine must provide documentation verifying the amount of actual emission reductions achieved.

Adopted January 28, 2004

Effective February 19, 2004

**§116.777. Eligibility for Existing Facility Permits.**

(a) The owner or operator of a grandfathered facility may apply for an existing facility permit.

(b) Applications for an existing facility permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(c) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the existing facility permit and for complying with this subchapter.

Adopted May 22, 2002

Effective June 12, 2002

**§116.778. Additional Requirements for Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.**

In addition to complying with all applicable requirements of this subchapter, any application for a small business stationary source permit, a pipeline facilities permit, or an existing facility permit must include emissions from the facility resulting from any associated dockside vessel operations. These emissions must comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution control practices.

Adopted August 21, 2002

Effective September 12, 2002

**§116.779. Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.**

(a) Any application for a small business stationary source permit, a pipeline facilities permit, or an existing facility permit must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit, the owner or operator of the grandfathered facility shall submit information to the commission which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the grandfathered facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(2) Measurement of emissions. The permit may have provisions for measuring the emission of air contaminants as determined by the commission. These provisions may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet at least the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by EPA under authority granted under FCAA, §111, as amended.

(4) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under FCAA, §112, as amended.

(5) NESHAPs for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology (MACT) standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112, or as listed in Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA Section 112, 40 CFR 63)).

(6) Performance demonstration. The grandfathered facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after the permit has been issued in order to demonstrate further that the facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A grandfathered facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of Significant Deterioration (PSD) review. A grandfathered facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).



(9) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the grandfathered facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the grandfathered facility is an affected source as defined in §116.15(1) of this title (relating to Section 112(g) Definitions), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)).

(11) Application content. In addition to any other requirements of this subchapter, the applicant shall:

- (A) identify each facility to be included in the permit;
- (B) identify the air contaminants emitted; and
- (C) provide emission rate calculations.

(b) In addition to the requirements of subsection (a) of this section, an application for a pipeline facilities permit shall propose a control method and identify the date by which the control method will be implemented. The proposed control method shall demonstrate compliance with the following requirements.

(1) Facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions), shall demonstrate that each grandfathered reciprocating internal combustion engine will achieve at least a 50% reduction of the hourly emissions rate of nitrogen oxides (NO<sub>x</sub>), expressed in terms of grams per brake horsepower-hour (g/bhp-hr). The commission may also require a 50% reduction of the hourly emissions rate of volatile organic compounds (VOC), expressed in terms of g/bhp-hr for each engine located in the East Texas region as defined in §101.330 of this title.

(2) The commission shall require up to a 20% reduction of the hourly emissions rate of NO<sub>x</sub> and may also require up to a 20% reduction of the hourly emissions rate of VOC, both expressed in terms of g/bhp-hr, from grandfathered reciprocating internal combustion engines located in the West Texas region as defined in §101.330 of this title or El Paso County.

(3) Notwithstanding the requirements of paragraphs (1) and (2) of this subsection, the owner or operator of more than one grandfathered reciprocating internal combustion engine may average the reductions achieved among more than one reciprocating internal combustion engine connected to or part of a gathering or transmission pipeline in order to demonstrate the reductions required in paragraphs (1) and (2) of this subsection. If the owner or operator chooses to average among engines located in both the East and West Texas regions as defined in §101.330 of this title it must be demonstrated that the sum of the reductions achieved from all of the engines located in the

East Texas region as defined in §101.330 of this title will achieve the reductions required in paragraph (1) of this subsection. For purposes of this paragraph, El Paso County is included in the West Texas region as defined in §101.330 of this title.

(4) If the emissions reductions required by paragraphs (1) and (2) of this subsection will be achieved by averaging reductions as allowed by paragraph (3) of this subsection, the average may not include emission reductions achieved in order to comply with any other state or federal law. If the emission reductions required by paragraphs (1) and (2) of this subsection will be achieved at one account, the reduction may include emission reductions achieved since January 1, 2001 in order to comply with another state or federal law.

(c) In addition to the requirements of subsection (a) of this section, an application for an existing facility permit shall propose an air pollution control method that is at least as beneficial as the best available control technology (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 submittal of the existing facility permit application, considering the age and remaining useful life of the facility. The application shall identify the date by which the control method will be implemented.

Adopted May 22, 2002

Effective June 12, 2002

**§116.780. Public Participation for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits.**

(a) An applicant for a pipeline facilities permit or an existing facility permit shall publish a notice of intent to obtain the permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(b) Any person who may be affected by emissions from a grandfathered facility may request the commission to hold a notice and comment hearing on the pipeline facilities permit application or the existing facility permit application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit in accordance with §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any request for a notice and comment hearing must be made in writing during the 30-day public comment period.

(c) Any notice and comment hearing regarding initial issuance of a pipeline facilities permit or an existing facility permit shall be conducted in accordance with the procedures in §116.781 of this title (relating to Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits) and not under the APA.

(d) The commission's response to public comments and the notice of its decision on whether to issue or deny a pipeline facilities permit or an existing facility permit will be conducted in accordance

with the procedures in §116.783 of this title (relating to Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications).

(e) A person affected by a decision to issue or deny a pipeline facilities permit or an existing facility permit may seek review, as appropriate, under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

Adopted May 22, 2002

Effective June 12, 2002

**§116.781. Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits.**

(a) The notice and comment hearing requirements apply only to the initial issuance of a pipeline facilities permit or an existing facility permit.

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a grandfathered facility is unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered facility, and that request is reasonable, the commission will hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the grandfathered facility is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

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

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

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

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The commission may set reasonable time limits for oral statements, and may require the submission of statements in writing.

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

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

(e) The commission will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

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

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

(h) The commission will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this subchapter.

(j) The commission will respond to comments consistent with §116.783 of this title (relating to Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications).

Adopted May 22, 2002

Effective June 12, 2002

**§116.783. Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications.**

(a) After the public comment period expires or the conclusion of any notice and comment hearing, the commission will send notice by first-class mail of the final action on the pipeline facilities permit application or the existing facility permit application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

- (1) the response to any comments submitted during the public comment period;
- (2) identification of any change in the conditions of the draft permit and the reasons for the change; and
- (3) a statement that any person affected by the decision of the executive director may file a motion to overturn under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

Adopted May 22, 2002

Effective June 12, 2002

**§116.785. Permit Fee.**

(a) Fees required. Any person who applies for a permit under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits must remit a fee of \$450 at the time of application for such permit. If the facility is a small business stationary source facility as defined in TCAA, §382.0365(h), the fee shall be \$100.

(b) Payment of fees. All permit fees must be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission and delivered to the Texas Natural Resource Conservation Commission, P. O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the commission will begin examination of the application.

(c) Return of fees. Fees must be paid at the time an application for a permit is submitted in accordance with this division. If the applicant withdraws the application prior to issuance of the permit, 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 in accordance with 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 permit has been issued by the commission.

Adopted May 22, 2002

Effective June 12, 2002

**§116.786. General and Special Conditions.**

(a) Permits issued under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits may contain general and special conditions. The holders of a permit under this division shall comply with any and all such conditions.

(b) General conditions. Holders of permits issued under this division shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Sampling requirements.

(A) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(B) All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission.

(C) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations, or contracting with an independent sampling consultant.

(2) Equivalency of methods. The permit holder must 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 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.

(3) Recordkeeping. The permit holder shall:

(A) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(B) keep all required records in a file at the plant site. If, however, the facility normally operates unattended, records shall be maintained at the nearest staffed location within the State of Texas as specified in the application;

(C) make the records available at the request of personnel from the commission or any air pollution control program having jurisdiction;

(D) comply with any additional recordkeeping requirements specified in special conditions attached to the permit; and

(E) retain information in the file for at least two years following the date that the information or data is obtained.

(4) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(5) Maintenance of emission control. The permitted facilities 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. The permit holder shall provide notification for upset and maintenance 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).

(6) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit 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.

(B) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(C) 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 permit.

(c) Special conditions. The holders of permits issued under this division shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of this title.

(2) Special conditions for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit in accordance with Subchapter F of this chapter (relating to Standard Permits); or

(ii) a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule).

(B) Such written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review in accordance with:

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)); or

(II) the provisions in §116.150 and §116.151 of this title (relating to Nonattainment Review), and §§116.160 - 116.163 of this title (relating to Prevention of Significant Deterioration Review).

Adopted May 22, 2002

Effective June 12, 2002

**§116.787. Amendments and Alterations of Permits Issued Under this Division.**

The owner or operator planning the modification of a facility permitted under this division relating to small business stationary source permits, pipeline facilities permits, and existing facility permits must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for permits issued under this division are subject to the requirements of Subchapter B of this chapter.

Adopted May 22, 2002

Effective June 12, 2002

**§116.788. Renewal of Permits Issued Under this Division.**

Permits issued under this division (relating to Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits) shall be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

Adopted May 22, 2002

Effective June 12, 2002

**§116.790. Delegation.**

The commission delegates to the executive director the authority to take any action on a permit issued under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits.

Adopted May 22, 2002

Effective June 12, 2002



**DIVISION 3: EXISTING FACILITY FLEXIBLE PERMITS**

**§§116.793 - 116.807**

**Effective September 12, 2002**

**§116.793. Eligibility for Existing Facility Flexible Permits.**

(a) Existing facility flexible permit. The owner or operator of a grandfathered facility or group of grandfathered facilities at a site may apply for an existing facility flexible permit. The existing facility flexible permit may also include facilities permitted under TCAA, §382.0519. A person may apply for an existing facility flexible permit in accordance with §116.794 of this title (relating to Existing Facility Flexible Permit Application) for a facility, group of facilities, or account, provided that:

- (1) only one existing facility flexible permit may be issued at an account site;
- (2) modifications to facilities covered by an existing facility flexible permit may be handled through the amendment of the existing facility flexible permit;
- (3) permitting of a new facility may be handled through the amendment of an existing facility flexible permit; and
- (4) an existing facility 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 (relating to Applicability) provided however, that all facilities covered by an existing facility 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 facility flexible permit and all rules and regulations of the commission.

(c) Applications for an existing facility flexible permit shall be submitted under the seal of a Texas licensed professional engineer if required by §116.110(e) of this title.

(d) Responsibility for existing facility 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.

**§116.794. Existing Facility Flexible Permit Application.**

Any application for a new existing facility flexible permit must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted an existing facility flexible permit, the owner or operator of the grandfathered facility shall submit information to the commission which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the facility, group of facilities, or account as determined under §116.800 of this title (relating to Emission Caps and Individual Emission Limitations), will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(2) Measurement of emissions. The facility, group of facilities, or account will have provisions for measuring the emission of air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual."

(3) Control method. The grandfathered facility or group of grandfathered facilities shall use an air pollution control method that is at least as beneficial as the best available control technology (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 submittal of the existing facility permit application, considering the age and remaining useful life of the facility. Facilities located in nonattainment or near nonattainment areas which obtained a voluntary emission reduction permit (VERP) under Division 4 of this subchapter (relating to Voluntary Emission Reduction Permits) shall use generally available control technology (GACT). Control technology beyond ten year old BACT, GACT, or a combination of ten year old BACT and GACT may be used on certain facilities to provide the emission reductions necessary to comply with this requirement on a group of facilities or account basis, provided however, that the existing level of control may not be lessened for any facility.

(4) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR), Part 60 will meet at least the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by the EPA under authority granted under FCAA, §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under FCAA, §112, as amended.

(6) NESHAPs for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum achievable control technology (MACT) standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA Section 112, 40 CFR 63)).

(7) Performance demonstration. The facility, group of facilities, or account will achieve the performance specified in the existing facility flexible permit application. The applicant may be required to submit additional engineering data after an existing facility flexible permit has been issued in order to demonstrate further that the facility, group of facilities, or account will achieve the performance specified in the existing facility flexible permit. In addition, initial compliance testing with ongoing compliance determined through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing may be required.

(8) Nonattainment review. If the facility, group of facilities, or account is located in a nonattainment area, each facility shall comply with all applicable requirements in accordance with Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(9) Prevention of Significant Deterioration (PSD) review. If the facility, group of facilities, or account is located in an attainment area, each facility shall comply with all applicable requirements in accordance with Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(10) Air dispersion modeling or ambient monitoring. Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's Air Permits Division to determine the air quality impacts from the facility, group of facilities, or account.

(11) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the source is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), it shall comply with all applicable requirements in accordance with Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, Section 112(g), 40 CFR Part 63)).

(12) Mass cap and trade allocations. If subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) the facility, group of facilities, or account must obtain allocations to operate.

(13) Application content. In addition to any other requirements of this chapter, the applicant shall:

(A) identify each air contaminant for which an emission cap is desired;

(B) identify each facility to be included in the existing facility flexible permit;

(C) identify each source of emissions to be included in the existing facility flexible permit, and for each source of emissions identify the Emission Point Number (EPN) and the air contaminants emitted;

(D) for each emission cap, identify all associated EPNs and provide emission rate calculations based on the expected maximum capacity and the proposed control technology; and

(E) for each individual emission limitation, identify the EPN and provide emission rate calculations based on the expected maximum capacity and the proposed control technology.

(14) Proposed control technology and compliance demonstration. The applicant shall specify the control technology proposed for each unit to meet the emission cap and demonstrate compliance with all emission caps at expected maximum production capacity.

Adopted May 22, 2002

Effective June 12, 2002

**§116.795. Public Participation for Initial Issuance of Existing Facility Flexible Permits.**

(a) An applicant for a permit under this division relating to existing facility flexible permits shall publish notice of intent to obtain the permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(b) Any person who may be affected by emissions from a grandfathered facility may request the commission to hold a notice and comment hearing on the application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit in accordance with §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any hearing request must be made in writing during the 30-day public comment period.

(c) Any hearing regarding initial issuance of a permit under this division shall be conducted in accordance with the procedures in §116.796 of this title (relating to Notice and Comment Hearings for Initial Issuance of Existing Facility Flexible Permits) and not under the APA.

(d) The commission's response to public comments and the notice of its decision on whether to issue or deny a permit under this division will be conducted in accordance with the procedures in §116.797 of this title (relating to Notice of Final Action on Existing Facility Flexible Permit Applications).

(e) A person affected by a decision to issue or deny a permit under this division may seek review, as appropriate, in accordance with the appropriate procedure in Chapter 50 of this title

(relating to Action on Applications and Other Authorizations), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

(f) Any person who applies for an amendment to an existing facility flexible permit regarding 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, Section 112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 of this title (relating to Public Notice).

Adopted May 22, 2002

Effective June 12, 2002

**§116.796. Notice and Comment Hearings for Initial Issuance of Existing Facility Flexible Permits.**

(a) The notice and comment hearing requirements apply only to the initial issuance of an existing facility flexible permit.

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a grandfathered facility is unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered facility, and that request is reasonable, the commission will hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the grandfathered facility is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

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

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

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

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The commission may set reasonable time limits for oral statements, and may require the submission of statements in writing.

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

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

(e) The commission will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

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

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

(h) The commission will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this subchapter.

(j) The commission will respond to comments consistent with §116.797 of this title (relating to Notice of Final Action on Existing Facility Flexible Permit Applications).

Adopted May 22, 2002

Effective June 12, 2002

**§116.797. Notice of Final Action on Existing Facility Flexible Permit Applications.**

(a) After the public comment period or the conclusion of any notice and comment hearing, the commission will send notice by first-class mail of the final action on the existing facility flexible permit application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

- (1) the response to any comments submitted during the public comment period;
- (2) identification of any change in the conditions of the draft permit and the reasons for the change; and
- (3) a statement that any person affected by the decision of the executive director may file a motion to overturn under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

Adopted May 22, 2002

Effective June 12, 2002

**§116.798. Permit Fee.**

(a) Fees required. Any person who applies for a permit under this division relating to existing facility flexible permits must remit a fee of \$450 at the time of application for such permit. If the facility is a small business stationary source facility as defined in TCAA, §382.0365(h), the fee shall be \$100.

(b) Payment of fees. All permit fees must be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission and delivered to the Texas Natural Resource Conservation Commission, P. O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the commission will begin examination of the application.

(c) Return of fees. Fees must be paid at the time an application for a permit is submitted in accordance with this division. If the applicant withdraws the application prior to issuance of the permit, 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 in accordance with 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 permit has been issued by the commission.

Adopted May 22, 2002

Effective June 12, 2002

**§116.799. General and Special Conditions.**

(a) Existing facility flexible permits may contain general and special conditions. The holders of existing facility 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 in accordance with §§116.150, 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, Section 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 existing facility flexible permit.

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

(1) Sampling requirements. If sampling of stacks or process vents is required, the existing facility flexible permit holder shall contact the commission's Office of Compliance and Enforcement, Engineering Services Section 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 existing facility flexible permit holder is also responsible for providing sampling facilities and conducting the sampling operations, or contracting with an independent sampling consultant.

(2) Equivalency of methods. It shall be the responsibility of the existing facility 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 existing facility 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.

(3) Recordkeeping. A copy of the existing facility flexible permit along with information and data sufficient to demonstrate continuous compliance with the emission caps and individual emission limitations contained in the existing facility 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 the State of 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 existing facility flexible permit. Information in the file shall be retained for at least two years following the date that the information or data is obtained.

(4) Maximum allowable emission rates. An existing facility 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 existing facility flexible



permit. Existing facility flexible permitted sources are limited to the emission limits and other conditions specified in the table attached to the existing facility flexible permit.

(5) Emission cap readjustment. If a schedule to install additional controls is included in the existing facility flexible permit and a facility subject to such a schedule is taken out of service, the emission cap contained in the existing facility 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.

(6) Maintenance of emission control. The facilities covered by the existing facility 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 upset 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).

(7) Compliance with rules. Acceptance of an existing facility 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 existing facility 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 existing facility flexible permit.

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

Adopted May 22, 2002

Effective June 12, 2002

**§116.800. Emission Caps and Individual Emission Limitations.**

(a) Emission caps. Each emission cap for a specific pollutant will be established as follows.

(1) Emissions will be calculated for each facility based on application of best available control technology (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 submittal of the existing facility permit application considering the age and remaining useful life of the facility, generally available control technology (GACT) for facilities with a voluntary emission reduction permit located in nonattainment areas or near nonattainment areas, or a combination of ten year old BACT and GACT at expected maximum capacity.

(2) The calculated emissions will be summed.

(b) Individual emission limitations. An individual emission limitation will be established in the same permit for each pollutant not covered by an emission cap for facilities covered by the existing facility flexible permit. In addition, an individual emission limitation may be established for a pollutant covered by an emission cap when the expected capacity of a facility is less than the expected maximum capacity to prevent a facility from exceeding emission levels appropriate for the proposed controls.

(c) Readjustment of emission cap. If a facility subject to an emission cap is shut down for a period longer than 12 months, the emission cap shall be readjusted by lowering the emission cap by an amount that the shut down facility contributed to the original calculation of the emission cap. If a new facility is brought into the existing facility flexible permit, an emission cap shall be adjusted by modifying the emission cap accordingly.

(d) An emission cap will be readjusted downward for any facility covered by an existing facility flexible permit if that facility becomes subject to any new state or federal regulation which would lower emissions or require an emission reduction. The adjustment will be made at the time the existing facility flexible permit is amended or altered. If an amendment to an existing facility flexible permit is not required to meet the new regulation, the permittee must submit a request to alter the permit and include information describing how compliance with the new requirement will be demonstrated within 60 days of making the change.

Adopted May 22, 2002

Effective June 12, 2002

#### **§116.801. Implementation Schedule for Additional Controls.**

If the installation of additional controls is required for a grandfathered facility to meet an emission cap for a pollutant, the existing facility flexible permit shall specify an implementation schedule for such additional controls. Any such schedule shall require installation of controls before March 1, 2007 for facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions), or before March 1, 2008 for facilities located in the West Texas region as defined in §101.330 of this title or El Paso County. The permit may also specify how the emission cap will be adjusted if such a facility is taken out of service or fails to install the additional control equipment as provided by the implementation schedule.

Adopted May 22, 2002

Effective June 12, 2002

#### **§116.802. Significant Emission Increase.**

An increase in emissions from operational or physical changes at an existing facility covered by an existing facility flexible permit is insignificant for the purposes of state new source review under this subchapter, if the increase does not exceed either the emission cap or individual emission limitation for

the facility covered by the existing facility flexible permit. This section does not apply to an increase in emissions from a new facility nor to the emission of an air contaminant not previously emitted by an existing facility.

Adopted May 22, 2002

Effective June 12, 2002

**§116.803. Additional Requirements for Existing Facility Flexible Permit Applications.**

Any application for an existing facility flexible permit must include emissions from the facility resulting from any associated dockside vessel operations. These emissions must comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution control practices.

Adopted August 21, 2002

Effective September 12, 2002

**§116.804. Limitation on Physical and Operational Changes.**

Neither operational nor physical changes at an account may result in an increase in actual emissions at facilities not covered by the existing facility flexible permit unless those affected facilities are authorized in accordance with §116.110 of this title (relating to Applicability).

Adopted May 22, 2002

Effective June 12, 2002

**§116.805. Amendments and Alterations for Existing Facility Flexible Permits.**

The owner or operator planning a modification of a facility permitted under this division, relating to existing facility flexible permits, must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for existing facility flexible permits are subject to the requirements of Subchapter B of this chapter.

Adopted May 22, 2002

Effective June 12, 2002

**§116.806. Existing Facility Flexible Permit Renewal.**

Permits issued under this division, relating to existing facility flexible permits, will be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

Adopted May 22, 2002

Effective June 12, 2002

**§116.807. Delegation.**

The commission delegates to the executive director the authority to take any action on a permit issued under this division, relating to existing facility flexible permits.

Adopted May 22, 2002

Effective June 12, 2002

**DIVISION 4: VOLUNTARY EMISSION REDUCTION PERMITS**  
**§§116.810 - 116.814, 116.816, 116.820, 116.840 - 116.842, 116.850, 116.860, 116.870**  
**Effective June 12, 2002**

**§116.810. Eligibility.**

(a) The owner or operator of a grandfathered facility may apply for a permit to operate that facility under this subchapter. Applications under this subchapter must be submitted before September 1, 2001.

(b) Applications for a voluntary emission reduction permit (VERP) shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(c) The owner or authorized operator of the grandfathered facility, group of facilities, or account is responsible for applying for the VERP and for complying with this subchapter.

Adopted December 16, 1999

Effective January 11, 2000

**§116.811. Voluntary Emission Reduction Permit Application.**

Any application for a voluntary emissions reduction permit (VERP) must include a completed Form PI-1V Voluntary Emission Reduction Permit Application. The Form PI-1V must be signed by an authorized representative of the applicant. The Form PI-1V specifies additional support information which must be provided before the application is deemed complete. In order to be granted a VERP, the owner or operator of the grandfathered facility shall submit information to the commission which demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the grandfathered facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(2) Measurement of emissions. The VERP may have provisions for measuring the emission of air contaminants as determined by the commission. These may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) Control method.

(A) Control method in attainment areas. A grandfathered facility in an attainment area shall use an air pollution control method that is at least as beneficial as the best available control technology (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 submittal of the VERP application considering the age and remaining useful life of the facility, except as provided by subparagraphs (B), (C), and (D) of this paragraph.

(B) Control method in nonattainment areas and the following attainment counties: Bexar, Gregg, Harrison, Nueces, Smith, Travis, and Victoria. A grandfathered facility located in a nonattainment area for a national ambient air quality standard, or a grandfathered facility which emits volatile organic compounds or nitrogen oxides in an attainment county listed in this subparagraph, shall use the more stringent of:

(i) a control method at least as beneficial as that described in subparagraph (A) of this paragraph; or

(ii) a control method that the commission finds is demonstrated to be generally achievable for facilities in that area of the same type that are permitted under this section, considering the age and remaining useful life of the facility.

(C) Emissions reductions may be deferred at grandfathered facilities according to §116.816 of this title (relating to Deferral of Emission Reductions).

(D) A VERP may be issued for a grandfathered facility:

(i) that makes a good faith effort to make equipment improvements and emission reductions necessary to meet the requirements of subparagraph (A) or (B) of this paragraph;

(ii) that, in spite of the effort, cannot reduce the facility's emissions to the degree necessary for the issuance of the permit; and

(iii) whose owner or operator acquires a sufficient number of emission reduction credits under the program established under §116.812 of this title (relating to Project Emission Reduction Credits) to offset the emissions exceeding those which would otherwise be allowed under subparagraph (A) or (B) of this paragraph.

(4) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet at least the requirements of any applicable NSPS as listed under Title 40 CFR Part 60, promulgated by EPA under authority granted under FCAA, §111, as amended.

(5) National Emission Standards for Hazardous Air Pollutants (NESHAPS). The emissions from each facility as defined in 40 CFR Part 61 will meet at least the requirements of any applicable NESHAPS, as listed under 40 CFR Part 61, promulgated by EPA under authority granted under FCAA, §112, as amended.

(6) NESHAPS for source categories. The emissions from each affected facility shall meet at least the requirements of any applicable maximum available control technology (MACT) standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112, or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR 63)).

(7) Performance demonstration. The grandfathered facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after a VERP has been issued in order to demonstrate further that the grandfathered facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(8) Nonattainment review. A grandfathered facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(9) Prevention of Significant Deterioration (PSD) review. A grandfathered facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(10) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the grandfathered facility.

(11) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the grandfathered facility is an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)), the affected source shall comply with all applicable requirements 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)).

(12) Application content. In addition to any other requirements of this subchapter, the applicant shall:

(A) identify each facility to be included in the VERP;

- (B) identify the air contaminants emitted;
- (C) provide emission rate calculations;
- (D) propose a control method; and
- (E) identify the date by which the control method will be implemented.

Adopted December 16, 1999

Effective January 11, 2000

**§116.812. Project Emission Reduction Credits.**

(a) Project emission reduction credits (PERC) shall be granted to the owner or operator of a grandfathered facility for the purpose of complying with §116.811(3)(D) of this title (relating to Voluntary Emission Reduction Permit Application) if the owner or operator conducts an emission reduction project to compensate for the facility's emissions exceeding the emission rate which would otherwise be required under §116.811(3) of this title, provided:

- (1) the emission reduction project reduces emissions in the airshed in which the grandfathered facility is located; and
- (2) the emission reduction project reduces net emissions from one or more sources in this state in an amount and type sufficient to prevent air pollution to a degree comparable to the amount of the reduction in the facility's emissions that would be necessary to comply with §116.811(3) of this title.

(b) Qualifying emission reduction projects include, but are not limited to:

- (1) generation of electric energy by a low-emission method, including:
  - (A) wind power;
  - (B) biomass gasification power; and
  - (C) solar power;
- (2) the purchase and destruction of high-emission automobiles or other mobile sources;
- (3) the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit;



(4) a carpooling or alternative transportation program for the owner's or operator's employees;

(5) a telecommuting program for the owner's or operator's employees; and

(6) the replacement by a motor vehicle fleet owner or operator of the fleet's primary fuel to either a lower-sulfur fuel than required by state or federal law, or the use of an alternative fuel approved by the commission under TCAA, §382.131(1).

(c) Applications for voluntary emission reduction permits (VERP) must demonstrate that any proposed PERCs meet the following criteria, as applicable. The PERC must be:

(1) enforceable by the commission;

(2) permanent, meaning that the emission reduction is unchanging for the remaining life of the source;

(3) quantifiable, so that the emission reduction can be measured or estimated with confidence using replicable techniques;

(4) surplus, such that the emission reduction is not otherwise required of a facility by a state or federal law, regulation, or agreed order; and

(5) a real reduction in which actual emissions are reduced.

(d) A VERP for a grandfathered facility participating in the PERC program will include a permit condition requiring the successful completion of the project or projects for which the facility owner or operator acquires the credits.

(e) Emission reduction credits acquired under this section are not transferrable.

Adopted December 16, 1999

Effective January 11, 2000

**§116.813. Application Review Schedule.**

(a) The commission will review the voluntary emission reduction permit (VERP) application in accordance with §116.114 of this title (relating to Application Review Schedule).

(b) The commission will give priority to the processing of an application for the issuance of a VERP under §116.811 of this title (relating to Voluntary Emission Reduction Permit Application), the amendment of a VERP under §116.820 of this title (relating to Modifications), or the renewal of a VERP under §116.860 of this title (relating to Voluntary Emission Reduction Permit Renewal) for

those grandfathered and formerly grandfathered facilities that are located less than two miles from the outer perimeter of a school, child day-care facility, hospital, or nursing home.

Adopted December 16, 1999

Effective January 11, 2000

**§116.814. General and Special Conditions.**

(a) Voluntary emission reduction permits (VERPs) may contain general and special conditions. The holders of a VERP shall comply with any and all such conditions.

(b) Holders of VERPs shall comply with the requirements of §116.115 of this title (relating to General and Special Conditions).

Adopted December 16, 1999

Effective January 11, 2000

**§116.816. Deferral of Emission Reductions.**

(a) A voluntary emission reduction permit (VERP) may defer the requirement to reduce emissions of certain air contaminants.

(b) To qualify for a deferral of emission reductions, an applicant must specifically request a deferral of reductions of certain air contaminants and shall demonstrate how substantial emission reductions will be made in other specific air contaminants.

(c) The commission may grant a deferral based on its prioritization of air contaminants, as necessary, to meet local, regional, and statewide air quality needs and only if the applicant has clearly demonstrated that exceptional economic hardship or specific technical impracticability problems are a barrier to implementing the reduction required by the VERP.

(d) The commission will consider the following criteria for prioritizing air quality needs to determine whether to grant a deferral:

(1) the location of the grandfathered facility;

(2) the size of the reduction of emissions of other specific air contaminants and whether the reductions are in addition to the reductions that are required for other specific air contaminants by §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application);

(3) the impact of the reduction of emissions of other specific air contaminants and the deferral on attaining National Ambient Air Quality Standards (NAAQS);

(4) anticipated state or federal regulations that may require reductions of the air contaminants being deferred; and

(5) the benefit to public health from the reduction of other specific air contaminants versus the deferral.

Adopted December 16, 1999

Effective January 11, 2000

**§116.820. Modifications.**

The owner or operator planning the modification of a facility permitted under a voluntary emission reduction 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.

Adopted December 16, 1999

Effective January 11, 2000

**§116.840. Public Participation for Initial Issuance.**

(a) An applicant for a voluntary emission reduction permit (VERP) shall publish notice of intent to obtain the permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(b) Any person who may be affected by emissions from a grandfathered facility may request the commission to hold a notice and comment hearing on the VERP application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any hearing request must be made in writing during the 30-day public comment period.

(c) Any hearing regarding initial issuance of a VERP shall be conducted under the procedures in §116.841 of this title (relating to Notice and Comment Hearings for Initial Issuance) and not under the APA.

(d) The commission's response to public comments and the notice of its decision on whether to issue or deny a VERP will be conducted under the procedures in §116.842 of this title (relating to Notice of Final Action).

(e) A person affected by a decision to issue or deny a VERP may seek review, as appropriate, under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

Adopted December 16, 1999

Effective January 11, 2000

**§116.841. Notice and Comment Hearings for Initial Issuance.**

(a) The notice and comment hearing requirements apply only to the initial issuance of a voluntary emission reduction permit (VERP).

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a grandfathered facility is unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered facility, and that request is reasonable, the commission will hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the grandfathered facility is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

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

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

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

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The commission may set reasonable time limits for oral statements, and may require the submission of statements in writing.

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

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

(e) The commission will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

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

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

(h) The commission will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

(i) The draft permit may be changed based on comments pertaining to whether the permit provides for compliance with the requirements of this subchapter.

(j) The commission will respond to comments consistent with §116.842 of this title (relating to Notice of Final Action).

Adopted December 16, 1999

Effective January 11, 2000

**§116.842. Notice of Final Action.**

(a) After the public comment period or the conclusion of any notice and comment hearing, the commission will send notice by first-class mail of the final action on the application to any person who commented during the public comment period or at the hearing, and to the applicant.

(b) The notice must include the following:

- (1) the response to any comments submitted during the public comment period;
- (2) identification of any change in the conditions of the draft permit and the reasons for the change; and
- (3) a statement that any person affected by the decision of the commission may petition for a rehearing under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

Adopted December 16, 1999

Effective January 11, 2000

**§116.850. Voluntary Emission Reduction Permit Application Fee.**

Any person who applies for a voluntary emission reduction permit (VERP) shall remit a fee.

(1) If the grandfathered facility will use a control method at least as stringent as those defined in §116.811(3)(A) or (B) of this title (relating to Voluntary Emission Reduction Permit Application), the application fee shall be \$450.

(2) If the grandfathered facility will defer emission reductions under §116.811(3)(C) of this title, or if the grandfathered facility will use emission reduction credits under §116.811(3)(D) of this title, the application fee shall be \$1,000.

(3) Only one of the applicable fees required in paragraphs (1) and (2) of this section shall be remitted with a single VERP application which proposes to control more than one facility at an account. If more than one facility is included in a single VERP application, the applicant shall remit the highest of the applicable fees.

(4) Notwithstanding paragraph (1) of this section, the maximum fee for a VERP for a small business, as defined in FCAA, §507(c), shall be \$100, if the grandfathered facility will use a control method at least as stringent as those defined in §116.811(3)(A) or (B) of this title.

Adopted December 16, 1999

Effective January 11, 2000

**§116.860. Voluntary Emission Reduction Permit Renewal.**

(a) Voluntary emission reduction permits (VERP) shall be renewed in accordance with Subchapter D of this chapter (relating to Permit Renewals).

(b) To renew a VERP with credits acquired under §116.812 of this title (relating to Project Emission Reduction Credits) the owner or operator of the facility shall have:

(1) made equipment improvements or emission reductions necessary to meet the requirements of §116.811(3) of this title (relating to Voluntary Emission Reduction Permit Application); or

(2) acquired additional credits under the program as necessary to meet the permit requirements of §116.811(3) of this title.

Adopted December 16, 1999

Effective January 11, 2000

**§116.870. Delegation.**

The commission may delegate to the executive director the authority to take any action on a voluntary emission reduction permit.

Adopted December 16, 1999

Effective January 11, 2000