

**SUBCHAPTER B: NEW SOURCE REVIEW PERMITS**  
**DIVISION 1: PERMIT APPLICATION**  
**§§116.110 - 116.112, 116.114 - 116.117, 116.119, 116.120, 116.127,**  
**116.128**  
**EFFECTIVE APRIL 17, 2014**

**§116.110. Applicability.**

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

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

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

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

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

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

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

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

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

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

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

(c) Compliance history. For all authorizations listed in subsections (a) and (b) of this section or ' 116.116 of this title (relating to Changes to Facilities), compliance

history reviews may be required under Chapter 60 of this title (relating to Compliance History).

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

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

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

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

(e) Change in ownership.

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

(A) the date of the ownership change;

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

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

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

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

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

(f) Submittal under seal of Texas licensed professional engineer. Applications for permit or permit amendment with an estimated capital cost of the project above \$2 million, and not subject to any exemption contained in the Texas Engineering

Practice Act (TEPA), shall be submitted under seal of a Texas licensed professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas Board of Professional Engineers. The estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

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

Adopted August 7, 2002

Effective August 29, 2002

**§116.111. General Application.**

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that emissions from the facility, including any associated dockside vessel emissions, meet all of the following.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and property of the public.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant 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 Commission on Environmental Quality Sampling Procedures Manual."

(C) Best available control technology (BACT) must be evaluated for and applied to all facilities subject to the TCAA. Prior to evaluation of BACT under

the TCAA, all facilities with pollutants subject to regulation under Title I Part C of the Federal Clean Air Act (FCAA) shall evaluate and apply BACT as defined in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements).

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under 40 Code of Federal Regulations (CFR) Part 60, promulgated by the United States Environmental Protection Agency (EPA) under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology 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 Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review.

(i) If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(ii) If the proposed facility or modification meets or exceeds the applicable greenhouse gases thresholds defined in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse

Gases Sources) then it shall comply with all applicable requirements in this chapter concerning PSD review for sources of greenhouse gases.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

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

(b) In order to be granted a permit, amendment, or special permit amendment, the owner or operator must comply with the following notice requirements.

(1) Applications declared administratively complete before September 1, 1999, are subject to the requirements of Division 3 of this subchapter (relating to Public Notification and Comment Procedures).

(2) Applications declared administratively complete on or after September 1, 1999, are subject to the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Request for Reconsideration and Contested Case Hearings; Public Comment). Upon request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

**§116.112. Distance Limitations.**

(a) For any facility subject to the notice and hearing requirements of Subchapter B, Division 3 of this chapter (relating to Public Notification and Comment Procedures); Chapter 39, Subchapters A, D, H, or K of this title (relating to Applicability and General Provisions, Public Notice of Air Quality Applications, Applicability and General Provisions, and Public Notice of Air Quality Applications); or Chapter 122, Subchapter D of this title (relating to Public Announcement, Public Notice, Affected State Review, Notice and Comment Hearing, Notice of Proposed Final Action, EPA Review, and Public Petition), the measurement of distances to determine compliance with any location or distance limitation requirement in Texas Health and Safety Code, Chapter 382, shall be taken toward structures that are in use at the time the permit application is filed with the commission, and that are not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.

(b) The following facilities must satisfy the following distance criteria.

(1) Lead smelters. New lead smelting plants shall be located at least 3,000 feet from any individual's residence where lead smelting operations have not been conducted before August 31, 1987. This subsection does not apply to:

(A) a modification of a lead smelting plant in operation on or before August 31, 1987;

(B) a new lead smelting plant or modification of a plant with the capacity to produce 200 pounds or less of lead per hour; or

(C) a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations.

(2) Concrete crushing facilities. A concrete crushing facility must not be operated within 440 yards of any building in use as a single or multi-family residence, school, or place of worship at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission.

(A) The measurement of distances shall be taken from the point on the concrete crushing facility nearest to the residence, school, or place of worship to the point on the building in use as a residence, school, or place of worship that is nearest the concrete crushing facility.

(B) The minimum distance limitation and measurement requirements of this paragraph do not apply to concrete crushing facilities that were authorized to operate at the site as of September 1, 2001.

(C) Unless the facility is located in, or located in a county adjacent to, a county with a population of 2.4 million or more, the minimum distance limitation and measurement requirements of this paragraph do not apply to facilities operated on a site during one period of no more than 180 calendar days that crush concrete resulting from the demolition of a structure on that site for use primarily at that site, and which comply with all applicable conditions stated in commission rules, including operating conditions.

(D) The minimum distance limitation and measurement requirements of this paragraph do not apply to structures occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.

(c) For applicable distance limitations at hazardous waste management facilities, see §335.204 of this title (relating to Unsuitable Site Characteristics), as amended and adopted in the August 22, 2003 issue of the Texas Register (28 TexReg 6915), and §335.205 of this title (relating to Prohibition of Permit Issuance), as amended and adopted in the November 9, 2001 issue of the Texas Register (26 TexReg 9135).

Adopted January 14, 2004

Effective February 4, 2004

#### **§116.114. Application Review Schedule.**

(a) Review schedule. The executive director shall review permit applications in accordance with the following.

(1) Notice of completion or deficiency. The executive director shall mail written notification informing the applicant that the application is complete or that it is deficient within 90 days of receipt of the application for a new permit, or amendment to a permit or special permit.

(A) If the application is deficient, the notification must state:

(i) the additional information required; and

(ii) the intent of the executive director to void the application if information for a complete application is not submitted.

(B) Additional information may be requested within 60 days of receipt of the information provided in response to the deficiency notification.

(2) Preliminary decision to approve or disapprove the application. The executive director shall conduct a technical review and send written notice to the applicant of the preliminary decision to approve or not approve the application within 180 days from receipt of a completed permit application or 150 days from receipt of a completed permit amendment. If the applicant has provided Notice of Receipt of Application and Intent to Obtain Permit public notification as required by the executive director under Chapter 39 of this title (relating to Public Notice), one of the following shall apply:

(A) if comments are received on the proposed facility and replied to by the executive director in accordance with §39.420 of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision) and §55.156 of this title (relating to Public Comment Processing); and

(B) if no requests for public hearing or public meeting on the proposed facility have been received or the application is otherwise exempt under §39.419(e) of this title (relating to Notice of Application and Preliminary Decision), the executive director shall send a copy of the Preliminary Decision to the applicant; or

(C) if Notice of Application and Preliminary Decision is required under §39.419(e) of this title, the executive director shall authorize this notice and send copies to the applicant and all other persons are required under §39.602 of this title (relating to Mailed Notice).

(3) Review schedule for Advanced Clean Energy Projects. In addition to the applicable requirements and deadlines specified in subsections (a) - (c) of this section, the following deadlines apply to permit applications for advanced clean energy projects as defined in Texas Health and Safety Code, §382.003, Definitions:

(A) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(B) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend this deadline up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent the commission from meeting this deadline without creating an extraordinary burden on the resources of the commission.



(4) Refund of permit fee.

(A) If the time limits provided in this section to process an application are exceeded, the applicant may appeal in writing to the executive director for a refund of the permit fee.

(B) The permit fee shall be reimbursed if it is determined by the executive director that the specified period was exceeded without good cause, as provided in Texas Civil Statutes, Article 6252-13b.1, §3.

(b) Voiding of deficient application.

(1) An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director under the provisions of this section, or Chapter 39 of this title.

(2) If an applicant fails to make such good faith effort after two written notices of deficiency, the executive director shall void the application and notify the applicant of the voidance and the remaining deficiencies in the voided application. If a new application is submitted within six months of the voidance, it shall meet the requirements of §116.111 of this title (relating to General Application) but will be exempt from the requirements of §116.140 of this title (relating to Applicability).

(c) Notification of executive director's decision.

(1) Notification to applicant. The executive director or the chief clerk shall send to the applicant the decision to approve or not approve the application if:

(A) no timely requests for reconsideration, contested case hearing, or public meeting on the proposed facility have been received; or

(B) if hearing requests have been received and withdrawn before the executive director's Preliminary Decision; or

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted; and

(D) the applicant has satisfied all public notification requirements of Chapter 39 of this title.

(2) Notification to commenters. Persons submitting written comments under Chapter 39 of this title shall be sent the executive director's final action and given an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) at the same time that the applicant is notified. If the number of interested persons who have requested notification makes it impracticable for the commission to notify those persons by mail, the commission shall notify those persons by publication using the method prescribed by §382.031(a) of the Texas Health and Safety Code.

(3) Time limits. The executive director shall send notification of final action within:

(A) one year after receipt of a complete prevention of significant deterioration or nonattainment permit application, or a complete permit application for an action under Subchapter C of this chapter (relating to Plant-Wide Applicability Limits);

(B) 180 days of receipt of a completed permit or permit renewal application; or

(C) 150 days of receipt of a permit amendment or special permit amendment application.

Adopted June 2, 2010

Effective June 24, 2010

**§116.115. General and Special Conditions.**

(a) General and special conditions. Permits, special permits, standard permits, and special exemptions may contain general and special conditions.

(b) General conditions. Holders of permits, special permits, standard permits, and special exemptions shall comply with the following:

(1) the general conditions contained in the permit document if issued or amended prior to August 16, 1994; or

(2) the following general conditions if the permit or amendment is issued or amended on or after August 16, 1994, regardless of whether they are specifically stated within the permit document.

(A) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional

office of the commission not later than 15 working days after occurrence of the event.

(B) Start-up notification.

(i) The permit holder shall notify the appropriate air program regional office of the commission prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow a representative of the commission to be present at the commencement of operations.

(ii) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(iii) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the Office of Permitting and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(C) Sampling requirements.

(i) 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.

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

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

(D) 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.

(E) Recordkeeping. The permit holder shall:

(i) 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;

(ii) keep all required records in a file at the facility site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(iii) make the records available at the request of personnel from the commission or any local air pollution control agency having jurisdiction over the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner;

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

(v) retain information in the file for at least two years following the date that the information or data is obtained; and

(vi) for persons certifying and registering a federally-enforceable emission limitation in accordance with §116.611 of this title (relating to Registration To Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(F) 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." Emissions that exceed the maximum allowable emission rates are not authorized and are a violation of the permit.

(G) 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 emissions events and maintenance in accordance with §§101.201, 101.211, and 101.221 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; and Operational Requirements).

(H) Compliance with rules.

(i) 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 Texas Clean Air Act and the conditions precedent to the granting of the permit.

(ii) 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.

(iii) 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, special permits, standard permits, and special exemptions 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 Title 30 of the Texas Administrative Code.

(2) Special condition 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 under Subchapter F of this chapter (relating to Standard Permits); or

(ii) an exemption under 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 under:

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

(II) the provisions in Division 5 of this subchapter (relating to Nonattainment Review Permits) and Division 6 of this subchapter (relating to Prevention of Significant Deterioration Review).

Adopted February 9, 2011

Effective March 3, 2011

**§116.116. Changes to Facilities.**

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

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

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

(b) Permit amendments.

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

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

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

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

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

(3) Any person who applies for an amendment to a permit to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) under Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 of this title (relating to Public Notice).

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

(c) Permit alteration.

(1) A permit alteration is:

(A) a decrease in allowable emissions; or

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

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

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

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

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

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

(B) involve a change in permit conditions; or

(C) affect facility or control equipment performance.

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

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

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

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

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

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

(e) Changes to qualified facilities.

(1) Prior to determining if this subsection may be applied to a proposed change to a facility, the following will apply:

(A) The facility must be authorized under this chapter or Chapter 106 of this title.

(B) A separate netting analysis shall be made for each proposed change to determine the applicability of major New Source Review by demonstrating that any increase in actual emissions is below the threshold for major modification as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions). Proposed changes exceeding the major modification threshold cannot be authorized under this subsection. This analysis shall meet the definition and requirements of net emissions increase in §116.12 of this title.

(2) Prior to changes under this subsection, facility owners or operators will submit Form PI-E, Notification of Changes to Qualified Facilities, and the following additional requirements will apply:

(A) Facility owners or operators will simultaneously submit, where applicable, an application for a permit revision for each permit issued under §116.111 of this title involved in the qualified facility transaction.

(B) Owners or operators of facilities authorized under Subchapter F of this Chapter, (relating to Standard Permits) shall submit a revision to the representations in the facility registration in accordance with §116.611 of this title (relating to Registration to Use a Standard Permit).

(C) Any applicable permit issued under §116.111 of this title will be revised to reflect changes under this subsection to facilities authorized under Chapter 106 of this title. If no applicable permit issued under §116.111 of this title is involved in the qualified facility transaction then changes shall be certified by a registration for an emission rate under §106.6 of this title (relating to Registration of Emissions).

(D) No allowable emission rate as defined in §116.17 of this title (relating to Qualified Facilities Definitions) shall be exceeded.



(E) The facility has received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur, or uses control technology that is at least as effective as the BACT that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur. There will be no reduction in emission control efficiency.

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

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

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

(4) In making the determination in paragraph (3) of this subsection, the effect on emissions of the following shall be considered:

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

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

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

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

(A) The equivalent decrease in emissions shall be based on the same time periods (e.g., hourly and 12-month rolling average rates) as the allowable emissions for the facility at which the change will occur.

(B) Emissions of different compounds within the same air contaminant category may be interchanged. Emissions of substances that were, but are not currently, listed as a volatile organic compound (VOC) by the United States Environmental Protection Agency (EPA) may be substituted for emissions of compounds currently listed by EPA as a VOC as referenced in §101.1 of this title (relating to Definitions) provided the compound being used as a substitute is not regulated as a hazardous air pollutant and is not toxic. The substitution of current VOCs for compounds that have been removed from the VOC list by EPA is prohibited.

(C) For allowable emissions for individual compounds, any interchange shall adjust the emission rates for the different compounds in accordance with the ratio of the effects screening levels of the compounds. The effects screening level shall be determined by the executive director.

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

(E) The facility owner or operator shall demonstrate that the change will not adversely affect ambient air quality.

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

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

(7) As used in this subsection, the term "physical and operational change" does not include:

(A) construction of a new facility; or

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

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

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

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

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

(A) Intraplant trading means the consideration of decreases in allowable and actual emissions from other qualified facilities in accordance with paragraph (4) of this subsection.

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

(C) The decreases in allowable and actual emissions shall be based on emission rates for the same time periods (e.g., hourly and 12-month rolling average) as the allowable emissions for the facility at which the change will occur and for which an intraplant trade is desired.

(D) Actual emissions shall be based on data that is representative of the emissions actually achieved from a facility during the relevant time period (e.g., hourly or 12-month rolling average).

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

(11) A separate netting analysis shall be performed for each proposed change under this subsection.

(f) Use of credits. Notwithstanding any other subsection of this section, discrete emission reduction credits may be used to exceed permit allowables as described in §101.376(b) of this title (relating to Discrete Emission Credit Use) if all applicable conditions of §101.376 of this title are met. This subsection does not authorize any physical changes to a facility.

Adopted September 15, 2010

Effective October 7, 2010

**§116.117. Documentation and Notification of Changes to Qualified Facilities.**

(a) Persons making changes under §116.116(e) of this title (relating to Changes to Facilities) shall maintain documentation at the plant site demonstrating that the changes satisfy §116.116(e) of this title. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain the documentation. The documentation shall be made available to representatives of the commission upon request. The documentation shall include:

(1) quantification of all emission increases and decreases associated with the physical or operational change;

(2) a description of the physical or operational change;

(3) a description of any equipment being installed; and

(4) sufficient information as necessary to show that the project will not adversely affect ambient air quality and will comply as applicable with:

(A) §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); or

(B) Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(b) Nothing in this section shall limit the applicability of any federal requirement.

Adopted September 15, 2010

Effective October 7, 2010

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

(a) Facilities or sources that meet the conditions of one or more of the paragraphs of this subsection are considered by the commission to be de minimis, which means that registration or authorization prior to construction is not required:

(1) categories of facilities or sources included on the list entitled De Minimis Facilities or Sources; <sup>a</sup>

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

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

- (B) coatings (excluding plating materials), 100 gallons per year;
- (C) dyes, 1,000 pounds per year;
- (D) bleaches, 1,000 gallons per year;
- (E) fragrances (excluding odorants), 250 gallons per year;
- (F) water-based surfactants/detergents, 2,500 gallons per year;

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

Figure: 30 TAC §§116.119(a)(3)

| ESL of Substance(s) | Emission Rate Cap for Individual Substances, Sitewide |             | Emission Rate Cap for Multiple Substances, Sitewide |             |
|---------------------|---|-------------|---|-------------|
|                     | (pounds/day)  | (tons/year) | (pounds/day)  | (tons/year) |
| ≥3500               | 5   | 0.9         | 10  | 2.4         |
| 1200-3499           | 3   | 0.5         | 6   | 1.3         |
| 400-1199            | 1   | 0.2         | 3   | 0.5         |
| 100-399             | 0.25  | 0.05        | 1   | 0.2         |

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

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

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

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

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

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

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

- (A) typical operating scenarios;
- (B) typical design and location;
- (C) the types and rates of air contaminants emitted;
- (D) engineering judgment and experience; and
- (E) toxicological or health impacts.

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

Adopted August 9, 2003

Effective September 4, 2000

#### **§116.120. Voiding of Permits.**

(a) A permit or permit amendment under this chapter is void if the permit holder does one of the following:

(1) fails to begin construction within 18 months of issuance, except as noted in subsection (b) of this section;

(2) discontinues construction for more than 18 consecutive months prior to completion; or

(3) fails to complete construction within a reasonable time.

(b) The executive director may grant extensions to begin construction. Permits issued to holders who have received extensions will be subject to revision based on best available control technology, lowest achievable emission rate, and netting or offsets as applicable. A first extension of 18 months may be granted solely at the request of the permit holder. One additional extension of up to 18 months may be granted if the permit holder demonstrates that emissions from the facility will comply with all rules and regulations of the commission and the intent of the TCAA, including protection of the public's health and physical property; and

(1) the permit holder is a party to litigation not of the permit holder's initiation regarding the issuance of the permit; or

(2) the permit holder has spent, or committed to spend, at least 10% of the estimated total cost of the project up to a maximum of \$5 million.

(c) A permit holder granted an extension under subsection (b)(1) of this section may receive one subsequent extension if the permit holder meets the conditions of subsection (b)(2) of this section.

Adopted August 20, 2003

Effective September 14, 2003

**§116.127. Actual to Projected Actual and Emissions Exclusion Test for Emissions.**

(a) If projected actual emissions are used or emissions are excluded from the emission increase resulting from the project, the owner or operator shall document and maintain a record of the following information before beginning construction, and this information must be provided as part of the notification, certification, registration, or application submitted to the executive director to claim or apply for state new source review authorization for the project. If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall provide a copy of this information to the executive director before beginning actual construction:

(1) a description of the project;

(2) identification of the facilities of which emissions of a federally regulated new source review pollutant could be affected by the project; and

(3) a description of the applicability test used to determine that the project is not a major modification for any pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded from the project emissions increase and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) If projected actual emissions are used to determine the project emission increase at a facility, the owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project at that facility and calculate and maintain a record of the annual emissions from that facility, in tons per year, on a calendar year basis for:

(1) a period of five years following resumption of regular operations after the change; or

(2) a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at that facility.

(c) If the facility is an electric utility steam generating unit, the owner or operator shall submit a report to the executive director within 60 days after the end of each calendar year of which records must be maintained documenting the unit's annual emissions during the calendar year that preceded submission of the report.

(d) If the facility is not an electric utility steam generating unit, the owner or operator shall submit a report to the executive director if the annual emissions from the project exceed the baseline actual emissions by a significant amount for that pollutant, and the emissions exceed the preconstruction projection for any facility. The report shall be submitted to the executive director within 60 days after the end of each calendar year. The report shall contain:

(1) the name, address, and telephone number of the major stationary source; and

(2) the calculated actual annual emissions.

(e) The owner or operator of the facility shall make the information required to be documented and maintained by this section available for review upon request for inspection by the executive director, local air pollution control program, and the general public.



**§116.128. Amendment Application, Public Notice and Contested Case Hearing Procedures for Certain Electric Generating Facilities.**

(a) Applicability. This section applies to permit amendment applications submitted solely to allow an owner or operator of an electric generating facility (EGF) to reduce emissions and comply with a requirement imposed by the Federal Clean Air Act, §112 (42 United States Code (USC), §7412) to use applicable maximum achievable control technology (MACT). The applications shall be limited to changes in method of control for an existing electric utility steam generating unit, as defined in 40 Code of Federal Regulations (CFR) §63.42, for the purpose of achieving a MACT standard promulgated by the United States Environmental Protection Agency (EPA) under Federal Clean Air Act, §112. The application may request authorization for collateral increases in emissions that result from installation of this control technology. Amendment applications submitted under this section are subject to the requirements of Divisions 1, 4, 5, and 6 of this subchapter (relating to Permit Application, Permit Fees, Nonattainment Review Permits, and Prevention of Significant Deterioration Review, respectively).

(b) Issuance of Draft Permit. Not later than the 45th day after the date the application is received and the executive director determines it is both administratively and technically complete, the executive director shall issue a draft permit.

(c) Notice and Public Participation. The public participation requirements of Chapters 39 and 55 of this title (relating to Public Notice, and Requests for Reconsideration and Contested Case Hearings; Public Comment, respectively) shall not apply, except as specifically required by this section.

(1) The applicant shall comply with the following notice requirements:

(A) The applicant shall publish notice as follows:

(i) The executive director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the EGF is located, or in the municipality nearest to the location of the EGF. Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text prior to notice being given. The notice shall contain the following information:

(I) the permit application number;

(II) the applicant's name, address, and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;

(III) a brief description of the location or the proposed location of the EGF and the nature of the proposed activity;

(IV) a description of the choice of technology in the draft permit;

(V) the location, at a public place in the county in which the EGF is located, at which the following are available for review and copying:

(-a-) the complete permit application;

(-b-) the draft permit; and

(-c-) all other relevant supporting materials in the public files of the agency;

(VI) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a contested case hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(VII) a statement that a person who may be affected by the increased emission of air pollutants from the EGF associated with the changes in control technology that are the subject to the permit application or a member of the legislature in the general area is entitled to request a contested case hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(VIII) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;

(IX) the date, time, and location of any scheduled public meeting, and a brief description of the nature and purpose of the meeting;

(X) if applicable, a statement that any contested case hearing will be based on legitimate issues of material fact regarding whether the choice of control technology in the draft permit is the MACT required under the Federal Clean Air Act, §112 (42 USC, §7412);

(XI) the date, time, and location of any scheduled contested case hearing that will be held if any requests for contested case hearing are received;

(XII) the name, address, and phone number of the commission office to be contacted for further information; and

(XIII) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(ii) Another notice that meets the requirements of §39.603(c)(2) of this title (relating to Newspaper Notice).

(B) The applicant is required to comply with the requirements of §39.405(h)(1) - (6) and (8) - (11) of this title (relating to General Notice Provisions) regarding alternative language newspaper notice.

(C) The applicant must file a copy of each published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of each published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is ten calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. The applicant shall furnish a copy of the notices and affidavits required by this section in the same manner as §39.605(1) of this title (relating to Notice to Affected Agencies).

(D) At the applicant's expense, the applicant shall comply with the sign posting requirements of §39.604 of this title (relating to Sign-Posting), except that the text of the sign shall refer to "Notice of Draft Permit and Preliminary Decision." The applicant shall furnish a copy of sign posting verification, within ten business days after the end of the comment period to the chief clerk and the executive director.

(E) The applicant shall make a copy of the technically complete application and the executive director's draft permit available for review and copying at a public place in the county in which the EGF is located beginning on the first day of newspaper publication of the notice required to be published by subparagraphs (A) and (B) of this paragraph and remain available for the comment period. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. If a contested case hearing is requested, the

application shall remain available until the commission has taken action on the application or the commission refers issues to the State Office of Administrative Hearings (SOAH).

(F) If the collateral increases in emissions are also subject to the requirements of Divisions 5 or 6 of this subchapter, the applicant shall comply with the additional public notice requirements:

(i) the notice required by subparagraph (A)(i) of this paragraph shall include the following text:

(I) as applicable, the degree of increment consumption that is expected from the source or modification;

(II) a statement that the state's air quality analysis is available for comment;

(III) the deadline to request a public meeting;

(IV) a statement that the executive director will hold a public meeting at the request of any interested person;

(V) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's Web site at the time of publication of the notice of draft permit;

(VI) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(VII) the location, at a public place in the county with internet access in which the EGF facility is located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(VIII) a statement that the executive director will respond to all comments regarding applications that are subject to the requirements of Divisions 5 or 6 of this subchapter; and

(IX) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting or a contested case hearing, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be

held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or if there is substantial public interest in the proposed activity when requested by any interested person;

(ii) a copy of the notices and affidavit shall be furnished to the chief executives of the city and county where the EGF is located, and any State or Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification; and

(iii) a copy of the complete application and the executive director's draft permit and preliminary decision shall be available for review and copying at a public place in the county with internet access in which the EGF is located.

(2) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the commission's regional office for the region in which the EGF is located.

(3) After technical review is complete for applications subject to the requirements of Divisions 5 or 6 of this subchapter, the executive director shall file the executive director's draft permit and preliminary decision, the preliminary determination summary and air quality analysis, with the chief clerk. The chief clerk shall make available by electronic means on the commission's Web site the executive director's draft permit and preliminary decision, the executive director's response to public comments, and as applicable, preliminary determination summary and air quality analysis.

(4) The public comment procedures are as follows.

(A) Public Meetings. The following shall apply to any public meeting held regarding the applications subject to the requirements of this section:

(i) A public meeting is intended for the taking of public comment and is not a contested case under the Texas Administrative Procedure Act.

(ii) At any time, the executive director or Office of the Chief Clerk may hold public meetings. The executive director or Office of the Chief Clerk shall hold a public meeting if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held.

(iii) For applications subject to the requirements of Prevention of Significant Deterioration or Nonattainment Permits subject to this subchapter, if an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis, a public meeting in response to a request under this paragraph will be held after notice of application and the executive director's preliminary decision is published. The commission may hold a public meeting and accept oral or written public comment concerning the application.

(iv) The applicant shall attend any public meeting held by the executive director or Office of the Chief Clerk.

(v) A tape recording or written transcript of the public meeting shall be made available to the public.

(B) Public Comment. The public comment submittal and processing procedures are as follows:

(i) Comments regarding the application must be filed with the chief clerk within the time period specified in the notice. The public comment period will be for 30 days following the last newspaper publication of notice of draft permit and extended to the close of any public meeting.

(ii) The executive director will respond to comments as required by §55.156(b) of this title (relating to Public Comment Processing).

(iii) After the executive director files the response to comments, the chief clerk shall mail (or otherwise transmit) the executive director's response to public comments to the applicant, any person who submitted comments during the public comment period, any person who requested to be on the mailing list for the permit action, any person who timely filed a request for a contested case hearing, the Office of Public Interest Counsel, and the Office of the Chief Clerk.

(iv) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision of the executive director to issue or deny a permit is inappropriate must raise all reasonably ascertainable arguments supporting that position by the end of the public comment period.

(v) The commission shall consider all comments received during the public comment period and at the public meeting in determining whether to issue the permit and what conditions should be included if a permit is issued.

(d) Hearing on Control Technology. The requirements of Chapters 50 and 55 of this title shall not apply, except as specifically required by this section.

(1) Not later than the 30th day after the first publication of notice of issuance of the draft permit under subsection (b) of this section, persons may submit to the commission any legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the MACT required under Federal Clean Air Act, §112 (42 USC, §7412) and may request a contested case hearing before the commission. A request for a contested case hearing by an affected person must be in writing and must be filed with the chief clerk. The hearing request must comply with the requirements of §55.201(d)(1) - (3) and (5) of this title (relating to Requests for Reconsideration or Contested Case Hearing).

(2) After the executive director issues the draft permit, the applicant or the executive director may file a request with the chief clerk that the application be sent directly to SOAH for a hearing on the application. The chief clerk shall refer the application directly to SOAH for a contested case hearing that is limited to the issue of whether the choice of technology approved in the draft permit is the MACT required under Federal Clean Air Act, §112. Notwithstanding the provisions of §80.126 of this title (relating to Public Comment in Direct Referrals) regarding responses to and presenting evidence on each issue raised in public comment, the scope of any hearing held under this rule shall be limited to the choice of technology approved in the draft permit and shall not include any other issues that were raised in public comment.

(3) Hearing request processing:

(A) If a hearing request is received, the chief clerk shall promptly coordinate with SOAH to establish a contested case hearing date and location in preparation for applications that may be referred to SOAH. Notwithstanding any other section of this title, the commission shall retain jurisdiction over the application until referral to SOAH pursuant to Chapter 55 of this title or Chapter 80 of this title (relating Contested Case Hearings).

(B) If one or more hearing requests are received, the chief clerk shall schedule the hearing request for a commission meeting consistent with the requirements of this section after the final deadline to submit requests for contested case hearing expires.

(C) Immediately after scheduling the hearing request for a commission meeting, the chief clerk shall mail notice to the applicant, executive director, the Office of Public Interest Counsel, and all timely commenters and requestors. The notice shall explain how to participate in the commission decision,

describe alternative dispute resolution under commission rules, and explain the relevant requirements of this section.

(D) The Office of General Counsel may establish a briefing schedule for the issues raised in a hearing request. Any briefs and replies shall be filed with the Office of the Chief Clerk, and served on the same day to the executive director, the Office of Public Interest Counsel, the applicant, and any requestors.

(E) Responses to hearing requests must specifically address:

- (i) whether the requestor is an affected person;
- (ii) whether the disputed issues involve questions of fact or of law;
- (iii) whether the issues were raised during the appropriate time period; and
- (iv) whether the issues are legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the MACT required under Federal Clean Air Act, §112.

(4) Commission consideration of hearing requests is as follows:

(A) Commission consideration of the following items is not itself a contested case subject to the Texas Administrative Procedure Act:

- (i) public comment;
- (ii) executive director's response to comment; or
- (iii) request for contested case hearing.

(B) The commission will evaluate requests for contested case hearing and may:

- (i) determine that a hearing request does not meet the requirements of this section, and act on the application; or
- (ii) determine that a hearing request meets the requirements of this section and:



(I) hold a hearing on the issue of whether the choice of technology approved in the draft permit is the MACT required under Federal Clean Air Act, §112;

(II) direct the chief clerk to refer application to the SOAH for a hearing on the issue of whether the choice of technology approved in the draft permit is the MACT required under Federal Clean Air Act, §112; or

(III) if the request raises only disputed issues of law or policy, make a decision on the issues and act on the application; or

(iii) refer one or more hearing requests to SOAH for a determination of whether the requestor is an affected person entitled to a contested case hearing.

(C) If the commission refers the hearing request to SOAH it shall be processed as a contested case under the Texas Administrative Procedure Act. If the commission or SOAH determines that a requestor is an affected person, SOAH may proceed with a contested case hearing on the issue of whether the choice of technology approved in the draft permit is the MACT required under Federal Clean Air Act, §112.

(D) In determining whether a person is an affected person, the commission or Administrative Law Judge shall consider the factors in §55.203 and §55.205 of this title (relating to Determination of Affected Person, and Request by Group or Association, respectively).

(E) A request for a contested case hearing shall be granted if the request is:

(i) made by the applicant or the executive director; or

(ii) made by an affected person if the request:

(I) identifies any legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the MACT required under Federal Clean Air Act, §112;

(II) is timely filed with the chief clerk;

(III) is pursuant to a right to hearing authorized by law; and

(IV) complies with the requirements of §55.201(d)(1) - (3) and (5) of this title.

(F) If a request for a contested case hearing is granted, a decision on a contested case hearing is an interlocutory decision on the validity of the request or issue and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties) or the issues referred to SOAH under this section. A person whose request for contested case hearing is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's request for contested case hearing.

(G) If all requests for contested case hearing are denied, §80.272 of this title (relating to Motion for Rehearing) applies. A motion for rehearing in such a case must be filed no more than 20 days after the date the person or attorney of record is notified of the commission's final decision or order. A person is presumed to have been notified on the third day after the date that the decision or order is mailed by first class mail. If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing, and Decision Final and Appealable, respectively) the commission's decision is final and appealable under Texas Health and Safety Code, §382.032, or under the Texas Administrative Procedure Act.

(H) If all hearing requestors whose requests for a contested case hearing were granted with regard to an issue, withdraw in writing their hearing requests with regard to the issue before issuance of the notice of the contested case hearing, the scope of the hearing no longer includes that issue except as authorized under Texas Health and Safety Code, §382.059.

(5) Procedural schedules:

(A) Upon convening a hearing pursuant to the procedural rules in Chapter 80 of this title and of SOAH, 1 TAC Chapter 155 (relating to Rules of Procedure), the Administrative Law Judge shall establish a procedural schedule, which shall provide for, as appropriate, discovery, hearing date, and pre- and post-hearing briefings, to comply with the provisions of Texas Health and Safety Code, §382.059 and this section.

(B) The Administrative Law Judge shall issue a proposal for decision within 80 days after the executive director issues the draft permit, or as specified by the commission, to meet the requirements of Texas Health and Safety Code, §382.059 and this section.

(e) Pleadings Following Proposal for Decision. The pleading requirements of §80.257 of this title (relating to Pleadings Following Proposal for Decision) shall not apply to applications filed under this section.

(1) Pleading schedule. Unless right of review has been waived, any party may file exceptions within five business days after the date of issuance of the proposal for decision. Any replies to exceptions shall be filed within eight business days after the date of issuance of the proposal for decision.

(2) Change of filing deadlines. On his own motion or at the request of a party, the general counsel may change the deadlines to file pleadings following the proposal for decision. A party requesting a change must file a written request with the chief clerk, and must serve a copy on the general counsel, the judge, and the other parties. The request must explain that the party requesting the change has contacted the other parties, and whether the request is opposed by any party. The request must include proposed dates and must indicate whether the judge and the parties agree on the proposed dates.

(f) Notice of Decision. No later than 120 days from the date of issuance of a draft permit the commission shall make a final decision on a permit amendment application under this section. The commission shall send notice of a decision on an application for a permit amendment by first-class mail to the applicant and all persons who commented during the public comment period or at the public meeting. The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change. The notice shall include the following text:

(1) state that any person affected by the decision of the commission may appeal the decision;

(2) state the date by which the appeal must be filed; and

(3) explain the appeal process.

(g) A person affected by a decision of the commission to issue or deny a permit amendment may file a motion for rehearing under §80.272 of this title. If the motion is denied under §80.272 and §80.273 of this title, the commission's decision is final and appealable under Texas Health and Safety Code, §382.032, or under the Texas Administrative Procedure Act.

(h) Expiration. This section expires on the sixth anniversary of the date the EPA administrator adopts standards for existing EGFs under the Federal Clean Air Act, §112, unless a stay of the rule is granted.

Adopted February 8, 2012

Effective March 1, 2012

**SUBCHAPTER B: NEW SOURCE REVIEW PERMITS**  
**DIVISION 4: PERMIT FEES**  
**§§116.140, 116.141, 116.143**  
**EFFECTIVE SEPTEMBER 14, 2003**

**§116.140. Applicability.**

Any person who applies for a permit to construct a new facility or to modify an existing facility, or for an amendment to an existing permit under §116.110 of this title (relating to Applicability) shall remit, at the time of application for such permit, a fee based on the estimated capital cost of the project. The fee will be determined as set forth in §116.141 of this title (relating to Determination of Fees). Fees will not be charged for permit alterations, amendments to special permits, site approvals for permitted portable facilities, changes of ownership, or changes of location of permitted facilities.

Adopted June 17, 1998

Effective July 8, 1998

**§116.141. Determination of Fees.**

(a) The estimated capital cost of the project is the estimated total cost of the equipment and services that would normally be capitalized according to standard and generally accepted corporate financing and accounting procedures.

(b) The following fee schedule shall be used by a permit applicant to determine the fee to be remitted with a permit application.

(1) If the estimated capital cost of the project is less than \$300,000 or if the project consists of new facilities controlled and operated directly by the federal government and the federal regulations for Prevention of Significant Deterioration (PSD) Review do not apply, the fee is \$900. The provisions of subsections (c) and (d) of this section do not apply to a project consisting of new facilities controlled and operated directly by the federal government.

(2) If the estimated capital cost of the project is \$300,000 or more and the PSD regulations do not apply, the fee is 0.30% of the estimated capital cost of the project. The maximum fee is \$75,000. For determination of fees for projects applicable to PSD regulations, see §116.163 of this title (relating to Prevention of Significant Deterioration Permit Fees).

(c) If the estimated capital cost of the project is less than \$50 million, the permit applicant shall include a certification that the estimated capital cost of the project is correct. Certification of the estimated capital cost of the project may be spot-checked and evaluated for reasonableness during permit processing. The reasonableness of project capital cost estimates used as a basis for permit fees shall be determined by the extent to which such estimates include fair and reasonable estimates of the capital value of the direct and indirect costs listed as follows.

(1) Direct costs are as follows:

(A) process and control equipment not previously owned by the applicant and not currently authorized under this chapter;

(B) auxiliary equipment, including exhaust hoods, ducting, fans, pumps, piping, conveyors, stacks, storage tanks, waste-disposal facilities, and air pollution control equipment specifically needed to meet permit and regulation requirements;

(C) freight charges;

(D) site preparation (including demolition), construction of fences, outdoor lighting, road, and parking areas;

(E) installation (including foundations), erection of supporting structures, enclosures or weather protection, insulation and painting, utilities and connections, process integration, and process control equipment;

(F) auxiliary buildings, including materials storage, employee facilities, and changes to existing structures;

(G) ambient air monitoring network.

(2) Indirect costs are as follows:

(A) final engineering design and supervision, and administrative overhead;

(B) construction expense (including construction liaison), securing local building permits, insurance, temporary construction facilities, and construction clean-up;

(C) contractor's fee and overhead.

(d) A fee of \$75,000 shall be required if no estimate of capital project cost is included with a permit application.

(e) An applicant for a permit or permit amendment not involving any capital expenditure shall be required to remit the minimum permit fee of \$900.

Adopted September 25, 2002

Effective October 20, 2002

**§116.143. Payment of Fees.**

All permit fees will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) or TCEQ and delivered with the application for permit or amendment to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3088. Fees must be paid at the time an application for a permit or amendment is submitted. Applications will not be considered for review nor will any time constraints required of TCEQ for application processing begin until a fee is received.

(1) Single fee. The executive director shall charge only one fee for multiple permits issued for one project if it is determined that the following conditions are met:

(A) all the component or separate processes being permitted are integral or related to the overall project;

(B) the project is under continuous construction of the component parts;

(C) the permitted facilities are to be located on the same or contiguous property; and

(D) applications for all permits for the project must be submitted at the same time.

(2) Return of fees. No fees will be refunded after a deficient application has been voided or after a permit or amendment has been issued by the agency. Fees will be returned under the following conditions.

(A) If no permit or amendment is issued by the agency or if the applicant withdraws the application prior to issuance of the permit or amendment, one-half of the fee will be refunded.

(B) The fee difference will be refunded if a permit application is withdrawn because the proposed construction or modification is determined to meet the requirements of:

(i) a standard permit issued under Subchapter F of this chapter (relating to Standard Permits);

(ii) a permit by rule under Chapter 106 of this title (relating to Permits by Rule); or

(iii) the conditions of §116.119 of this title (relating to De Minimis Facilities or Sources).

Adopted August 20, 2003

Effective September 14, 2003



**SUBCHAPTER B: NEW SOURCE REVIEW PERMITS**  
**DIVISION 5: NONATTAINMENT REVIEW**  
**§116.150, §116.151**  
**EFFECTIVE AUGUST 16, 2012**

**§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.**

(a) This section applies to all new source review authorizations for new construction or modification of facilities or emissions units that will be located in any area designated as nonattainment for ozone under 42 United States Code (USC), §§7407 *et seq.* as of the date of issuance of the permit, unless the following apply on the date of issuance of the permit:

(1) the United States Environmental Protection Agency (EPA) has made a finding of attainment;

(2) the EPA has approved the removal of nonattainment New Source Review (NSR) requirements from the area;

(3) the EPA has determined that Prevention of Significant Deterioration requirements apply in the area; or

(4) the EPA determines that nonattainment NSR is no longer required for purposes of antibacksliding.

(b) The owner or operator of a proposed new major stationary source, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) of volatile organic compound (VOC) emissions or nitrogen oxides (NO<sub>x</sub>) emissions, or the owner or operator of an existing stationary source of VOC or NO<sub>x</sub> emissions that will undergo a major modification, as defined in §116.12 of this title with respect to VOC or NO<sub>x</sub>, shall meet the requirements of subsection (d)(1) - (4) of this section, except as provided in subsection (e) of this section. Table I, located in the definition of major modification in §116.12 of this title, specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source and significant level for those classifications.

(c) Except as noted in subsection (e) of this section regarding NO<sub>x</sub>, the de minimis threshold test (netting) is required for all modifications to existing major sources of VOC or NO<sub>x</sub>, unless at least one of the following conditions are met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tons per year (tpy) of the individual nonattainment pollutant in areas classified under Federal Clean Air Act (FCAA), Title I, Part D, Subpart 2 (42 USC, §7511) classified as Serious or Severe;

(2) the proposed emissions increases associated with a project, without regard to decreases, is less than 40 tpy of the individual nonattainment pollutant in areas classified under FCAA, Title I, Part D, Subpart 1 (42 USC, §7502) and for those under FCAA, Title I, Part D, Subpart 2 (42 USC, §7511) classified as Marginal or Moderate; or

(3) the project emissions increases are less than the significant level stated in Table I located in the definition of major modification in §116.12 of this title and when coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(d) In applying the de minimis threshold test, if the net emissions increases are greater than the significant levels stated in Table I located in the definition of major modification in §116.12 of this title, the following requirements apply.

(1) The proposed facility or emissions unit shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility or emissions unit is a new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tpy of the applicable nonattainment pollutant. For these sources, best available control technology (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new facility or emissions unit and to each existing facility or emissions unit at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state must be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or emissions unit or facilities or emissions units commence operation, the emissions increases from the new or modified facility or emissions unit or facilities or emissions units must be offset. The proposed facility or emissions unit shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I located in the definition of major modification in §116.12 of this title. Internal offsets that are generated at the source and that otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources located in a serious or severe ozone nonattainment area with a PTE of less than 100 tpy of an applicable nonattainment pollutant are not required to undergo nonattainment new source review under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources located in a serious or severe ozone nonattainment area with a PTE of greater than or equal to 100 tpy of an applicable nonattainment pollutant can substitute federal BACT (as identified in §116.160(c)(1)(A) of this title (relating to Prevention of Significant Deterioration Requirements) for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis must demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(e) For sources located in the El Paso ozone nonattainment area as defined in 40 Code of Federal Regulations, Part 81, the requirements of this section do not apply to NO<sub>x</sub> emissions.

Adopted July 25, 2012

Effective August 16, 2012

**§116.151. New Major Source or Major Modification in Nonattainment Area Other Than Ozone.**

(a) This section applies to applications for new construction or modification of facilities or emissions units located in a designated nonattainment area for an air contaminant other than ozone. The owner or operator of a proposed new or modified facility or emissions unit that will be a new major stationary source for that nonattainment air contaminant, or the owner or operator of an existing major stationary source that will undergo a major modification with respect to that nonattainment air contaminant, shall meet the additional requirements of subsection (c)(1) - (4) of this section. Table I located in the definition of major modification in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source.

(b) The *de minimis* threshold test (netting) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than the major modification threshold for the pollutant identified in Table I located in the definition of major modification in §116.12 of this title.

(c) In applying the *de minimis* threshold test, if the net emissions increases are greater than the major modification levels stated in Table I located in the definition of major modification in §116.12 of this title, the following requirements apply.

(1) The proposed facility or emissions unit shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility or emissions unit is a new major source or major modification. LAER shall be applied to each new facility or emissions unit and to each existing facility or emissions unit at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state shall be in compliance or on a schedule for compliance with all applicable state and federal emission limits and standards.

(3) At the time the new or modified facility or emissions unit or facilities or emissions units commence operation, the emission increases from the new or modified facility or emissions unit or facilities or emissions units shall be offset. The proposed facility or emissions unit shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I located in the definition of major modification in §116.12 of this title.

(4) In accordance with the Federal Clean Air Act, the permit application shall contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis shall demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

Adopted July 25, 2012

Effective August 16, 2012

**SUBCHAPTER B: NEW SOURCE REVIEW PERMITS**  
**DIVISION 6: PREVENTION OF SIGNIFICANT DETERIORATION REVIEW**  
**§§116.160 - 116.164, 116.169**  
**EFFECTIVE APRIL 17, 2014**

**§116.160. Prevention of Significant Deterioration Requirements.**

(a) Each proposed new major source or major modification in an attainment or unclassifiable area shall comply with the requirements of this section. In addition, each proposed new major source of greenhouse gases (GHGs) or major modification involving GHGs shall comply with the applicable requirements of this section. The owner or operator of a proposed new or modified facility that will be a new major stationary source for the prevention of significant deterioration air contaminant shall meet the additional requirements of subsection (c)(1) - (4) of this section.

(b) *De minimis* threshold test (netting):

(1) is required for all modifications to existing major sources of federally regulated new source review pollutants, unless the proposed emissions increases associated with a project, without regard to decreases, are less than major modification thresholds for the pollutant identified in 40 Code of Federal Regulations (CFR) §52.21(b)(23); and

(2) is required for GHGs at existing major sources if the proposed modification results in an emissions increase, without regard to decreases, as required in §116.164(a)(2) and (4)(B) of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(c) In applying the *de minimis* threshold test (netting), if the net emissions increases are greater than the major modification levels for the pollutant identified in 40 CFR §52.21(b)(23) and for GHGs in §116.164 of this title, the following requirements apply.

(1) In addition to those definitions in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) the following definitions from prevention of significant deterioration of air quality regulations promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR §52.21 and the definitions for protection of visibility and promulgated in 40 CFR §51.301 as amended July 1, 1999, are incorporated by reference:

(A) 40 CFR §52.21(b)(12) - (15), concerning best available control technology, baseline concentrations, dates, and areas;

(B) 40 CFR §52.21(b)(19), concerning innovative control technology; and

(C) 40 CFR §52.21(b)(24) - (28), concerning federal land manager, terrain, and Indian reservations/governing bodies.

(2) The following requirements from prevention of significant deterioration of air quality regulations promulgated by the EPA in 40 CFR §52.21 are hereby incorporated by reference:

(A) 40 CFR §52.21(c) - (k), concerning increments, ambient air ceilings, restrictions on area classifications, exclusions from increment consumption, redesignation, stack heights, exemptions, control technology review, and source impact analysis;

(B) 40 CFR §52.21(m) - (p), concerning air quality analysis, source information, additional impact analysis, and sources impacting federal Class I areas;

(C) 40 CFR §52.21(r)(4), concerning relaxation of an enforceable limitation; and

(D) 40 CFR §52.21(v), concerning innovative technology.

(3) The term "facility" shall replace the words "emissions unit" in the referenced sections of the CFR.

(4) The term "executive director" shall replace the word "administrator" in the referenced sections of the CFR except in 40 CFR §52.21(g) and (v).

(d) All estimates of ambient concentrations required under this subsection shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by the EPA for use in the state program, and other specific provisions made in the prevention of significant deterioration state implementation plan. If the air quality impact model approved by the EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA.

**§116.161. Source Located in an Attainment Area with a Greater Than De Minimis Impact.**

The commission may not issue a permit to any new major stationary source or major modification located in an area designated as attainment or unclassifiable, for any National Ambient Air Quality Standard (NAAQS) under FCAA, §107, if ambient air impacts from the proposed source would cause or contribute to a violation of any NAAQS. In order to obtain a permit, the source must reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to eliminate the predicted exceedances of the NAAQS. A major source or major modification will be considered to cause or contribute to a violation of a NAAQS when the emissions from such source or modification would, at a minimum, exceed the de minimis impact levels specified in §101.1 of this title (relating to Definitions) at any locality that is designated as nonattainment or is predicted to be nonattainment for the applicable standard.

Adopted June 17, 1998

Effective July 8, 1998

**§116.162. Evaluation of Air Quality Impacts.**

In evaluating air quality impacts under §116.160 of this title (relating to Prevention of Significant Deterioration Requirements) or §116.161 of this title (relating to Sources Located in an Attainment Area with a Greater Than De Minimis Impact), the owner or operator of a proposed new facility or modification of an existing facility shall not take credit for reductions in impact due to dispersion techniques as defined in Title 40 Code of Federal Regulations (CFR). The relevant federal regulations are incorporated herein by reference, as follows:

(1) 40 CFR §51.100(hh) - (kk) promulgated November 7, 1986;

(2) the definitions of "owner or operator," "emission limitation and emission standards," "stack," "a stack in existence," and "reconstruction," as given under 40 CFR §51.100(f), (z), (ff), (gg), promulgated November 7, 1986, and 40 CFR §60.15, promulgated December 16, 1975, respectively;

(3) 40 CFR §51.118(a) and (b), promulgated November 7, 1986; and

(4) 40 CFR §51.164, promulgated November 7, 1986.

Adopted October 10, 2001

Effective November 1, 2001

**§116.163. Prevention of Significant Deterioration Permit Fees.**

(a) If the estimated capital cost of the project is less than \$300,000 or if the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, and the federal regulations for Prevention of Significant Deterioration (PSD) of Air Quality are applicable, the fee is \$3,000.

(b) If the estimated capital cost of the project is \$300,000 or more and the PSD regulations are applicable, the fee is 1.0% of the estimated capital cost of the project. The maximum fee is \$75,000.

(c) Whenever a permit application is submitted under PSD requirements, there shall be no additional fee for the state new source review permit application.

(d) Certification of the estimated capital cost of the project shall be provided in accordance with §116.141(c) and (d) of this title (relating to Determination of Fees).

(e) A fee of \$75,000 shall be required if no estimate of capital project cost is included with a permit application.

Adopted September 25, 2001

Effective October 20, 2002

**§116.164. Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources.**

(a) Greenhouse Gases (GHGs) are subject to Prevention of Significant Deterioration review under the following conditions:

(1) New source, major for non-GHGs. The stationary source is a new major stationary source for a federally regulated new source review (NSR) pollutant that is not GHGs, and will emit or have the potential to emit 75,000 tons per year (tpy) or more carbon dioxide equivalent (CO<sub>2</sub>e); or

(2) Existing source, major for non-GHGs. The stationary source is an existing major stationary source for a federally regulated NSR pollutant that is not GHGs, and will have a significant net emissions increase of a federally regulated NSR pollutant that is not GHGs, and a net emissions increase greater than zero tpy GHGs on a mass basis and 75,000 tpy or more CO<sub>2</sub>e.

(3) New source, major for GHGs Only. The new stationary source that will emit or has the potential to emit greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 Code of Federal Regulations (CFR) §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO<sub>2</sub>e.



(4) GHGs major modification at an existing source that is a major stationary source for GHGs.

(A) The existing stationary source emits or has the potential to emit greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO<sub>2</sub>e; and

(B) the stationary source undertakes a physical change or change in the method of operation that will result in a net emissions increase greater than zero tpy GHGs on a mass basis, and a net emissions increase of 75,000 tpy or more CO<sub>2</sub>e.

(5) Existing source that is not major. The existing stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase greater than or equal to 100 tpy GHGs on a mass basis, if the source is listed on the named source category list in 40 CFR §51.166(b)(1)(i), or greater than or equal to 250 tpy GHGs on a mass basis; and 100,000 tpy or more CO<sub>2</sub>e.

(b) New stationary sources with emissions of GHGs, or existing stationary sources that undertake a physical change or change in the method of operations that includes emissions of GHGs, that do not meet any of the conditions in subsection (a) of this section do not require authorization under this subchapter, Subchapter F of this chapter (relating to Standard Permits), Subchapter G of this chapter (relating to Flexible Permits), or Chapter 106 of this title (relating to Permits by Rule) for emissions of GHGs. Owners or operators of these sources must keep records sufficient to demonstrate the amount of emissions of GHGs from the source as a result of construction, a physical change or a change in method of operation do not require authorization under subsection(a) of this section. Records must be made available at the request of personnel from the commission or any local air pollution control agency having jurisdiction. Records must be maintained for a minimum of five years from the date of the construction, physical change, or change in method of operation.

Adopted March 26, 2014

Effective April 17, 2014

#### **§116.169. Greenhouse Gases Program Transitions.**

(a) Upon the effective date of the United States Environmental Protection Agency (EPA) approval of this chapter and rescission of the Federal Implementation Plan as published in the May 3, 2011, issue of the Federal Register (76 FR 25178), the commission will accept transfer of and review applications previously filed with

EPA for greenhouse gas prevention of significant deterioration permits. These applications will be subject to the applicable requirements of this chapter.

(b) Section 116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gas Sources) will not apply to greenhouse gases at a source that would not be subject to Prevention of Significant Deterioration Review for greenhouse gases under a change in federal law on or after March 26, 2014.

Adopted March 26, 2014

Effective April 17, 2014

**SUBCHAPTER B: NEW SOURCE REVIEW PERMITS**  
**DIVISION 7: EMISSION REDUCTIONS: OFFSETS**  
**§§116.170, 116.172, 116.174 - 116.176**  
**EFFECTIVE SEPTEMBER 14, 2003**

**§116.170. Applicability of Emission Reductions as Offsets.**

(a) No reduction may be used as an offset unless it has been certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; or Discrete Emission Credit Banking and Trading), except as provided for in subsection (c) of this section.

(b) Existing reductions not yet certified and banked as an emission credit must be certified and banked with the executive director by September 1, 2004 in order to be considered for use as an offset.

(c) A future reduction may be used as an offset for a permit provided that:

(1) the permit contains special conditions that specify the date by which the permit holder must submit to the executive director appropriate and sufficient data to verify that the reduction has occurred and the reduction is provided by start of operation;

(2) the reduction must be achieved prior to commencement of the permitted emissions for which the offset is required;

(3) the reduction meets all of the requirements of Chapter 101, Subchapter H, Division 1 or 4 of this title when submitted to the executive director for review per the requirements of the issued permit; and

(4) the permit holder agrees to obtain additional offsets if the review by the executive director indicates the reductions do not satisfy the original offset requirements.

Adopted August 20, 2003

Effective September 14, 2003

**§116.172. Emissions Offsets from Rocket Engine Firing and Cleaning.**

Emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source, shall be allowed to be offset by alternative or innovative means, provided the following conditions are met.

(1) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source permitted to test such engines as of November 15, 1990.

(2) The source demonstrates to the satisfaction of the executive director that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(3) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(4) The source will comply with an alternative measure, imposed by the executive director, designed to offset any emissions increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the executive director may impose an emissions fee to be paid, which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

Adopted August 20, 2003

Effective September 14, 2003

**§116.174. Determination by Executive Director To Authorize Reductions.**

The executive director may grant authority to a permit applicant to use prior emission reductions and emission reductions granted to the applicant by another entity (either public or private) in accordance with §116.170 of this title (relating to Applicability for Reduction Credits) if the commission determines that the prior emission reductions have, in fact, occurred and, when considered with other emission reductions that may be required by the permit as well as contaminants that will be emitted by the new source, will result in compliance with §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas), §116.151 of this title (relating to New Major Source or Major Modification in Nonattainment Areas Other Than Ozone), §116.160 of this title (relating to Prevention of Significant Deterioration Requirements), and §116.162 of this title (relating to Evaluation of Air Quality Impacts), as applicable, in the area where the new source is to be located. Prior as well as future emission reductions to be used as an offset shall be made conditions for granting authority to construct the proposed new source and shall be enforced.

Adopted June 17, 1998

Effective July 8, 1998

**§116.175. Recordkeeping.**

The executive director will maintain no records of emission offset credits claimed by an applicant in accordance with §116.170 of this title (relating to Applicability of Reduction Credits) other than those contained in permit application and permit files. The applicant shall maintain all records necessary to substantiate claims of emission reductions and shall make such records available for inspection upon request of the executive director.

Adopted August 16, 1993

Effective September 13, 1993

**§116.176. Use of Mass Cap Allowances for Offsets.**

Any allowances required to comply with the mass emission cap under Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) may be used to meet the correlating portion of the emission offset requirements needed to comply with §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas).

Adopted March 7, 2001

Effective March 29, 2001

**SUBCHAPTER B: NEW SOURCE REVIEW PERMITS**  
**DIVISION 8: PORTABLE FACILITIES**  
**§116.178**  
**EFFECTIVE MARCH 3, 2010**

**§116.178. Relocations and Changes of Location of Portable Facilities.**

(a) Portable facility requirements. The following requirements apply to portable facilities.

(1) A portable permit must be authorized by the executive director and designated with the appropriate portable permit, portable registration, or portable account number.

(2) An applicant shall not use a permit by rule or standard permit authorization as a waiver of public notice (public notice requirements as specified in subsection (b)(2) of this section) regardless of the registration number or account code assigned by the executive director. A facility authorized by the Air Quality Standard Permit for Concrete Batch Plants or concrete batch plant permits by rule for which an applicant provided public notice is an exception.

(3) The executive director will not convert a permanent facility permit number to a portable designation unless the owner or operator is requesting a change of location as defined in §116.20 of this title (relating to Portable Facilities Definitions) for the facility. The permit holder must publish notice for any change in an existing permit number. The notice must identify the new permit number and the proposed location.

(b) Relocation qualifications. The appropriate regional office may approve the relocation of a portable facility if the applicant's permit contains current special conditions defining the approval process to move. A relocation application cannot include a modification. Approval for relocation is based on one of the following conditions:

(1) a permitted portable facility and associated equipment are moving to a site for support of a public works project in which the proposed site is located in or contiguous to the right-of-way of the public works project; or

(2) a portable facility is moving to a site in which a portable facility has been located at the site at any time during the previous two years and the site was subject to public notice as required under Chapter 39 of this title (relating to Public

Notice), the Air Quality Standard Permit for Concrete Batch Plants, or the concrete batch plant permits by rule.

(c) Relocation request requirements. The permit holder shall submit a complete written request to the appropriate commission regional office for the new location and obtain written approval before the start of construction and commencement of operations at the new site. The permit holder is responsible for providing proof of submittal for all relocation requests. Construction may begin after receipt of approval from the appropriate commission regional office or 12 business days after the date of postmark or the date of personal delivery of the request, whichever occurs first, unless disapproval is sent within the 12 business days. The permit holder's request is considered approved if the appropriate regional office does not provide approval or denial of a complete submittal within 12 business days; however, the presumed approval does not exempt the applicant from ensuring that public notice was accomplished at the new site as required under Chapter 39 of this title. The relocation request shall contain all of the following information:

(1) the company name, address, company contact, and telephone number;

(2) a copy of the existing permit conditions and the maximum allowable emission rates table that is in effect for the permitted facility;

(3) the regulated entity number (RN), customer reference number (CN), applicable permit or registration numbers, and, if available, the Texas Commission on Environmental Quality account number;

(4) the location from which the facility is moving (current location);

(5) a location description of the proposed site (city, county, and exact physical location description);

(6) a scaled plot plan that identifies the location of all equipment and stockpiles, and also indicates that the required distances to the property lines can be met;

(7) a scaled area map that identifies the distance and direction to the closest off-property receptor (if required) and clearly indicates how the proposed site is contiguous or adjacent to the right-of-way of a public works project (if required);

(8) the proposed date for start of construction and expected date for start of operation;

(9) the expected time period at the proposed site;

(10) the permit or registration number of the portable facility that was located at the proposed site any time during the last two years, and the date the facility was last located there. This information is not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project; and

(11) proof that the proposed site had accomplished public notice, as required by Chapter 39 of this title. This proof is not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project.

(d) Denial of relocation. If the permit holder cannot qualify for a relocation, as described in subsection (c) of this section, the appropriate regional office shall deny the relocation request and the applicant may request a change of location, as defined in §116.20 of this title.

(e) Requesting changes to relocation instructions. A permit holder shall request from the executive director a permit alteration, as defined in §116.116(c)(1)(B) of this title (relating to Changes to Facilities), to update relocation instructions. The permit holder may apply for a relocation simultaneously with the alteration. The permit holder shall obtain written approval before the start of construction and commencement of operations at the new site and shall not assume approval within 12 businesses days. The permit holder shall submit the following information for any alteration request and relocation application to the TCEQ Central Office in Austin, Air Permits Division:

(1) the required form and attachments, including a detailed plot plan and area map; and

(2) a copy of the current permit.

(f) Requesting changes of location. For a change of location application, the permit holder shall submit the required form and attachments to the TCEQ Central Office in Austin, Air Permits Division. All applications must include an evaluation of best available control technology and protection of public health and welfare as described in §116.111(a)(2)(C) of this title (relating to General Application).