

SUBCHAPTER F: GENERAL OPERATING PERMITS
DIVISION 1: PROCEDURAL REQUIREMENTS FOR
GENERAL OPERATING PERMITS
§§122.501 - 122.506, 122.508 - 122.510
Effective August 14, 2003

§122.501. General Operating Permits.

(a) The executive director may issue a general operating permit for numerous similar stationary sources provided the following:

(1) the conditions of the general operating permit provide for compliance with all requirements of this chapter;

(2) the requirements under §122.506 of this title (relating to Public Notice for General Operating Permits) have been satisfied;

(3) the requirements under §122.330 of this title (relating to Affected State Review) have been satisfied;

(4) the requirements under §122.508 this title (relating to Notice and Comment Hearings for General Operating Permits) have been satisfied;

(5) the requirements under §122.350 of this title (relating to EPA Review) have been satisfied.

(b) General operating permits shall not be final until the requirements in §122.360 of this title (relating to Public Petition) have been satisfied.

(c) Each general operating permit shall identify the terms and conditions with which the permit holder shall comply.

(d) The executive director may revise or rescind any general operating permit issued by the executive director.

(1) The executive director may issue an administrative permit revision to a general operating permit provided the following:

(A) the change meets the criteria for an administrative permit revision in §122.211 of this title (relating to Administrative Permit Revisions); and

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter.

(2) The executive director may issue a minor permit revision provided the following:

(A) the change meets the criteria for a minor permit revision in §122.215 of this title (relating to Minor Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.509, 122.330, and 122.350 of this title (relating to Public Announcement for General Operating Permits; Affected State Review; and EPA Review) have been satisfied.

(3) The executive director may issue a significant permit revision provided the following:

(A) the change meets the criteria for a significant permit revision in §122.219 of this title (relating to Significant Permit Revisions);

(B) the conditions of the general operating permit provide for compliance with the requirements of this chapter; and

(C) the requirements of this chapter in §§122.506, 122.330, 122.508, and 122.350 of this title (relating to Public Notice for General Operating Permits; Affected State Review; Notice and Comment Hearings for General Operating Permits; and EPA Review) have been satisfied.

(4) A significant permit revision shall not be final until the requirements in §122.360 of this title have been satisfied.

(5) The executive director may rescind a general operating permit if a notice of the proposed rescission is provided under §122.506 of this title (relating to Public Notice for General Operating Permits).

(e) The executive director shall make a copy of the draft general operating permit accessible to the EPA.

(f) General operating permits must be renewed, consistent with the procedural requirements in subsection (a) of this section, at least every five years after the effective date.

(g) After issuance of a general operating permit, the executive director may combine the general operating permit with a previously issued general operating permit. Notice of this action will be published in the Texas Register and on the commission's publicly accessible electronic media.

§122.502. Authorization to Operate.

(a) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who submit a complete application under §122.134 of this title (relating to Complete Application) and who qualify for the general operating permit.

(b) Upon the granting of authorization to operate under a general operating permit, applicability determinations and the bases for the determinations in a general operating permit application become conditions under which the permit holder shall operate.

(c) The permit holder may be subject to enforcement action for operating without a permit if the permit holder, having been granted the authorization to operate under a general operating permit, is later determined not to qualify for the general operating permit.

(d) Authorizations to operate under general operating permits shall have terms not to exceed five years.

(e) More than one authorization to operate under a general operating permit may be granted for a site.

(f) A copy of the permit, the permit application, and the authorization to operate shall be maintained at the location specified in the authorization to operate.

(g) General operating permits shall not be authorized for affected units under the acid rain program.

(h) The executive director shall make a copy of the authorization to operate accessible to the EPA.

Adopted November 20, 2002

Effective December 11, 2002

§122.503. Application Revisions for Changes at a Site.

(a) The permit holder shall submit an application for a new authorization to operate to the executive director for the following activities at a site:

(1) a change in any applicability determination or the basis of any determination in the general operating permit application; or

(2) a change in the permit identification of ownership or operational control of a site where the executive director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the old and new permit holder is maintained with the permit.

(b) The application for a general operating permit under this subsection shall contain at a minimum the following:

- (1) a description of each change;
- (2) a description of the emission unit affected;
- (3) any changes in the applicability determinations;
- (4) any changes in the bases of the applicability determinations;
- (5) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);
- (6) a statement that the emission units qualify for the general operating permit; and
- (7) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official).

(c) If the following requirements are met, the change may be operated before a new authorization to operate is granted by the executive director except changes to deviation limits as defined in §122.10 of this title:

- (1) the permit holder complies with the following:
 - (A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);
 - (B) all applicable requirements;
 - (C) all state-only requirements; and
 - (D) the provisional terms and conditions as defined in §122.10 of this title;
- (2) the permit holder submits to the executive director the application before the change is operated;
- (3) the permit holder maintains, with the authorization to operate under the general operating permit the application until the executive director grants a new authorization to operate; and
- (4) the permit holder operates under the representations in the general operating permit application, as specified in §122.140 of this title (relating to Representations in Application).

(d) The permit holder need not comply with the representations in the application that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

(e) In every case, the applicable requirements and state-only requirements are always enforceable.

(f) The executive director shall grant a request for authorization to operate under a general operating permit to applicants who qualify.

(g) If the emission units addressed in the application no longer meet the requirements for a general operating permit, the permit holder must submit a complete application for another operating permit.

(h) If it is later determined that the permit holder does not qualify for a revision applied for under this section, the permit holder may be subject to enforcement action for operation without a permit.

Adopted November 20, 2002

Effective December 11, 2002

§122.504. Application Revisions When an Applicable Requirement or State-Only Requirement is Promulgated or Adopted or a General Operating Permit is Revised or Rescinded.

(a) If the applicability determinations or the bases for the determinations in the general operating permit application change due to the promulgation or adoption of an applicable requirement or state-only requirement or the revision or rescission of a general operating permit issued by the executive director, the following requirements apply.

(1) The permit holder shall submit an application for a new authorization to operate containing at a minimum the following information:

(A) a description of the emission unit affected;

(B) any changes in the applicability determinations;

(C) the basis of each determination identified under subparagraph (B) of this paragraph;

(D) the provisional terms and conditions as defined in §122.10 of this title (relating to General Definitions);

(E) a statement that the emission units qualify for the general operating permit; and

(F) certification in accordance with §122.165 of this title (relating to certification by a Responsible Official).

(2) The permit holder shall comply with the following:

(A) Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(B) all applicable requirements;

(C) all state-only requirements; and

(D) the provisional terms and conditions as defined in §122.10 of this title.

(3) If the application is required as the result of the promulgation or adoption of an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) record the information required in paragraph (1)(A) - (E) of this subsection before the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement;

(B) submit an application for a new authorization to operate no later than 90 days after the compliance date of the new applicable requirement or state-only requirement or effective date of the repealed applicable requirement or state-only requirement; and

(C) maintain the information required in paragraph (1)(A) - (E) of this subsection with the authorization to operate until a new authorization is granted.

(4) If the application is required as the result of the revision of a general operating permit that is not based on a change in an applicable requirement or state-only requirement, the permit holder shall do the following:

(A) submit the application no later than 90 days after the issuance of the general operating permit; and

(B) maintain the application with the authorization to operate until the general operating permit is revised.

(5) If the application is required as the result of a revision of a general operating permit to add periodic monitoring or compliance assurance monitoring requirements, the following requirements apply.

(A) The application shall include, at a minimum, the following:

- (i) the identification of the emission unit;
- (ii) the emission limitation or standard subject to compliance assurance monitoring (CAM) or periodic monitoring;
- (iii) an appropriate monitoring option provided in the general operating permit;
- (iv) if not defined by the monitoring option selected, a deviation limit;
- (v) a justification for any deviation limit proposed under clause (iv) of this subparagraph in accordance with subparagraph (B) or (C) of this paragraph; and
- (vi) any information required by the executive director to evaluate the requirements.

(B) Proposed CAM options specified in the application shall be designed to provide reasonable assurance of compliance with the applicable requirements and reflect proper operation and maintenance of the control device.

(C) Proposed periodic monitoring options specified in the application shall be sufficient to yield reliable data from the relevant time period that are representative of the emission unit's compliance with the applicable requirement, and testing, monitoring, reporting, or recordkeeping sufficient to assure compliance with the applicable requirement.

(D) The permit holder shall provide justification for any deviation limit according to one of the following.

- (i) The permit holder shall submit the following performance test data:
 - (I) control device operating parameter data from an applicable performance test conducted under conditions specified by the applicable rule;
 - (II) if the applicable rule does not specify testing conditions or only partially specifies testing conditions, control device operating parameter data from an applicable performance test conducted under conditions representative of maximum emissions potential under anticipated operating conditions at the emission unit; and
 - (III) a statement that no changes to the emission unit, including control device, have taken place that could result in a significant change in the control system performance, indicators (such as emissions, control device parameters, process parameters, or inspection and maintenance activities) to be monitored, or deviation limits since the performance test was conducted.

(ii) The permit holder shall submit manufacturer's recommendations, engineering calculations, and/or historical data.

(E) The executive director will not grant a request for a new authorization to operate under a general operating permit if the deviation limits have been deemed unacceptable. In such case, revised justification for deviation limits under subparagraph (D) of this paragraph shall be submitted for approval.

(F) Unless otherwise approved by the executive director, if a continuous emission monitoring system (CEMS), continuous opacity monitoring system (COMS), or predictive emission monitoring system (PEMS) is required by an applicable requirement, the permit holder shall submit a monitoring option from the general operating permit that includes the use of the CEMS, COMS, or PEMS to satisfy the requirements of this subchapter.

(G) The permit holder shall begin operation of the monitoring no later than 180 days after the issuance of the revised general operating permit.

(b) The permit holder need not reapply for a revised general operating permit, provided the following:

(1) the emission units addressed in the application qualify for the revised general operating permit;

(2) the applicability determinations remain unchanged; and

(3) the basis for each applicability determination remain unchanged.

(c) If a general operating permit is rescinded and not replaced, the authorization to operate under the general operating permit is revoked. The permit holder must apply for another operating permit no later than the date the general operating permit is rescinded.

(d) If as a result of the revision of a general operating permit the permit holder no longer qualifies for the general operating permit, the permit holder must apply for another operating permit no later than the date of issuance of the revised general operating permit.

(e) Those representations in the application not affected by the revision of a general operating permit remain conditions under which the permit holder shall operate.

(f) In every case, the applicable requirements and state-only requirements are always enforceable.

(g) The permit holder need not comply with the representations in the application or the terms and conditions codified in the general operating permit that have been replaced by provisional terms and conditions before the granting of a new authorization to operate.

Adopted November 20, 2002

Effective December 11, 2002

§122.505. Renewal of the Authorization to Operate Under a General Operating Permit.

(a) Authorizations to operate under general operating permits shall expire no later than five years from the date of the initial authorization to operate or renewal of the authorization to operate.

(b) The executive director shall provide written notice to the permit holder that the authorization to operate under the general operating permit is scheduled for review.

(1) The notice will be provided by mail no later than 12 months before the expiration of the authorization to operate under the general operating permit.

(2) The notice shall specify the procedure for submitting a renewal application.

(3) Failure to receive notice does not affect the expiration date of the authorization or the requirement to submit a timely and complete application.

(c) A renewal application shall be submitted by the permit holder to the executive director at least six months, but no earlier than 18 months, before the date of expiration of the authorization to operate under the general operating permit.

(d) The executive director shall grant a request for a renewal of an authorization to operate under a general operating permit to applicants who submit a complete application under §122.243 of this title (relating to Permit Renewal Procedures) and who qualify for the general operating permit.

(e) Expiration of the authorization to operate terminates the permit holder's right to operate unless a timely and complete renewal application has been submitted. After a timely and complete renewal application is submitted, the permit holder may continue to operate under the terms and conditions of the previous authorization to operate until the new authorization to operate is granted or denied.

(f) In determining whether and under what conditions an authorization to operate under a general operating permit should be renewed, the executive director shall consider the following:

(1) whether the general operating permit, in conjunction with the general operating permit application, provides for compliance with all applicable requirements and an accurate listing of state-only requirements; and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(g) The executive director shall make a copy of the renewal application, general operating permit, and any required notices accessible to the EPA.

Adopted August 9, 2000

Effective September 4, 2000

§122.506. Public Notice for General Operating Permits.

(a) Before the issuance, significant permit revision, or rescission of any general operating permit, the executive director shall publish notice of the opportunity for public comment and hearing on the draft general operating permit consistent with the requirements of this section. The executive director shall publish notice of a draft general operating permit in the *Texas Register*, the commission's publicly accessible electronic media, and in a newspaper of general circulation in the area affected by the general operating permit. If the general operating permit has statewide applicability, the notice shall be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: Austin, Dallas, and Houston. The notice shall contain the following information:

- (1) a description of the activities involved in the draft general operating permit;
- (2) the location and availability of copies of the draft general operating permit;
- (3) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing;
- (4) the notification that a person who may be affected by the emission of air pollutants from emission units that may be authorized to operate under the general operating permit is entitled to request a notice and comment hearing; and
- (5) the name, address, and phone number of the commission office to be contacted for further information.

(b) During the 30-day public notice comment period, any person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit may request in writing a notice and comment hearing on a draft general operating permit.

(c) The executive director shall make a copy of the general operating permit and any required notices accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit.

(d) The executive director shall make the draft general operating permit available for public inspection throughout the comment period during business hours at the commission's central office.

(e) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft general operating permit.

(f) The draft general operating permit may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(g) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

(h) The executive director shall provide 30 days' advance notice of the hearing.

(i) If the executive director combines general operating permits as specified in §122.501(g) of this title, notice of this action will be published in the Texas Register and the commission's publicly accessible electronic media.

Adopted August 9, 2000

Effective September 4, 2000

§122.508. Notice and Comment Hearings for General Operating Permits.

(a) All hearings regarding general operating permits shall be conducted under the procedures in this section.

(b) Any person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit may request that the executive director hold a hearing on a draft general operating permit.

(c) The executive director shall decide whether to hold a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from emission units that may be authorized to operate under the general operating permit, and that request is reasonable, the executive director shall hold a hearing.

(d) The executive director shall publish notice of a hearing on a draft general operating permit. The notice must be published at least 30 days before the date set for the hearing. The notice must include, at a minimum, the following:

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

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

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

(e) At the executive director's discretion, the hearing notice may be combined with the notice of the opportunity for public comment required by this subchapter.

(f) Any person may submit oral or written statements and data concerning the draft general operating permit.

(1) Reasonable time limits may be set for oral statements, and the submission of statements in writing may be required.

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

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

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

(h) Any person who believes that any condition of the draft general operating permit is inappropriate or that the preliminary decision to issue the general operating permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

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

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

(j) The executive director shall keep a record of all comments and also of the issues raised in the hearing. This record shall be available to the public.

(k) The draft general operating permit rule may be changed based on comments pertaining to whether the draft general operating permit provides for compliance with the requirements of this chapter.

(l) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

Adopted February 10, 1999

Effective March 4, 1999

§122.509. Public Announcement for General Operating Permits.

(a) The public announcement requirements in this section apply to minor permit revisions to general operating permits.

(b) The executive director shall publish an announcement of a draft general operating permit for a minor permit revision to a general operating permit on the commission's publicly accessible electronic media. The announcement shall contain the following:

(1) the location and availability of the following:

(A) the draft general operating permit;

(B) all other relevant supporting materials in the public files of the commission;

(2) a description of the comment procedures, including the duration of the public announcement comment period; and

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

(c) The executive director shall make a copy of the public announcement and date of publication accessible to the EPA and all local air pollution control agencies with jurisdiction in the counties that may be affected by the general operating permit.

(d) The executive director shall furnish a notice of the public announcement to any air pollution control agency of any affected state.

(e) The executive director shall make the draft general operating permit available for public inspection throughout the comment period during business hours at the commission's central office (and at the commission's regional office where the site is located).

(f) The executive director shall receive public comment for 30 days after the announcement of the draft general operating permit is published. During the comment period, any person may submit written comments on the draft general operating permit.

(g) The draft general operating permit may be changed based on comments pertaining to whether the general operating permit provides for compliance with the requirements of this chapter.

(h) Public notice requirements for general operating permits satisfy public announcement requirements.

(i) The executive director shall respond to comments consistent with §122.345 of this title (relating to Notice of Proposed Final Action).

§122.510. General Operating Permits Adopted by the Commission.

(a) Any general operating permit in this subchapter adopted by the commission shall remain in effect until it is repealed under the APA.

(b) Any authorization to operate under a general operating permit in this subchapter adopted by the commission that is replaced with a general operating permit issued by the executive director shall be automatically converted to an authorization to operate under the general operating permit issued by the executive director. Provided the applicability determinations and the bases for the determinations affecting a site remain unchanged, the permit holder is not required to submit an application for the general operating permit issued by the executive director.

Adopted February 10, 1999

Effective March 4, 1999