

SUBCHAPTER I: ELECTRIC GENERATING FACILITY PERMITS
§§116.910 - 116.922, 116.926, 116.928, 116.930, 116.931
Effective September 12, 2002

§116.910. Applicability.

(a) The owner or operator of a grandfathered electric generating facility (EGF) shall apply for a permit to operate that facility under this subchapter and may apply for permit authorization to operate certain facilities (identified in §116.911(f) of this title (relating to Electric Generating Facility Permit Application)) that are located at the same site as a grandfathered EGF.

(b) Owners or operators of electing EGFs opting to obtain allowances under Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading of Allowances), shall submit a request to alter any related existing New Source Review (NSR) permits at the time of application for a permit under subsection (a) of this section. Alterations must be consistent with the requirements of §116.116(c) of this title (relating to Changes to Facilities).

(c) The owner, or the operator who is authorized to act for the owner, of a grandfathered or electing EGF is responsible for complying with this subchapter.

(d) A municipal corporation, electric cooperative, or river authority may exclude any EGF with a nameplate capacity of 25 megawatts or less from this subchapter. The municipal corporation, electric cooperative, or river authority must notify the commission by January 1, 2000, of its intent to exclude those EGFs. If the municipal corporation, electric cooperative, or river authority reevaluates its intent to exclude EGFs, it may choose to permit any of those EGFs consistent with the requirements of this subchapter.

(e) Owners or operators of grandfathered facilities as defined in §116.10 of this title (relating to General Definitions) at sites with grandfathered or electing EGFs subject to this subchapter may consolidate any permit issued under Chapter 116, Subchapter H of this title with a permit issued under this subchapter.

(f) A grandfathered EGF that generates electric energy primarily for internal use but that during 1997 sold, to a utility power distribution system, less than one-third of its potential electrical output capacity, or less than 219,000 megawatt-hours, is not required to obtain a permit under this subchapter.

Adopted May 22, 2002

Effective June 12, 2002

§116.911. Electric Generating Facility Permit Application.

(a) Owners or operators of grandfathered or electing electric generating facilities (EGF) shall submit an application to authorize nitrogen oxides (NO_x) emissions and, if applicable, sulfur dioxide (SO₂)

and particulate matter (PM) emissions. The application must include a completed Form PI-1-U, General Application. The Form PI-1-U must be signed by an authorized representative of the applicant. The Form PI-1-U specifies additional support information which must be provided before the application is deemed complete. In order to be granted an electric generating facility permit (EGFP), the owner or operator shall submit information to the commission which demonstrates that all of the following are met.

(1) Measurement of emissions and performance demonstration. Applicants must propose monitoring and reporting for the measurement of emissions and demonstration of performance consistent with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(2) Control method. New control methods proposed in initial applications must comply with the requirements in §116.617(1), (3), (4)(A), and (B) and (5) - (9) of this title (relating to Standard Permit for Pollution Control Projects).

(3) Air dispersion modeling or ambient monitoring for pollution control projects. Computerized air dispersion modeling and/or ambient monitoring may be required by the commission's Air Permits Division where there is an increase in emissions to determine the air quality impacts from controls proposed under paragraph (2) of this subsection.

(4) Opacity limitations for coal-fired grandfathered and electing EGFs. The coal-fired grandfathered and electing EGFs must meet the opacity limitations of §111.111 of this title (relating to Requirements for Specified Sources).

(b) Application information for electing EGFs.

(1) In addition to the information required in this section, EGFP applications regarding electing EGFs shall contain the following information:

(A) documentation of the emissions from the 1997 Emissions Scorecard from the EPA Acid Rain Program, or if that information is not available, the actual emissions from that electing EGF for calendar year 1997;

(B) documentation of fuel consumption, fuel heating values, and heat input in millions of British thermal units (MMBtu) for calendar year 1997;

(C) identification of the electing EGFs to be included.

(2) Emissions of air contaminants from electing EGFs other than NO_x, and if applicable, SO₂ and PM, already authorized by Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), will not be authorized under this subchapter.

(c) The owner or operator of a grandfathered or electing EGF must submit an application for a permit under this subchapter on or before September 1, 2000.

(d) Any grandfathered natural gas-fired EGF for which a permit application was filed under subsection (a) of this section, or for which a permit has been obtained in accordance with subsection (a) of this section, or which is excluded in accordance with §116.910(d) of this title (relating to Applicability) from the requirement to submit an application under subsection (a) of this section is considered permitted for the emissions of all air contaminants from that EGF.

(e) An owner or operator of a grandfathered coal-fired EGF with a permit issued in accordance with subsection (a) of this section or with an application pending under subsection (a) of this section may submit an application for an EGFP in accordance with to §116.917 of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites) to authorize the emissions of all criteria pollutants from the EGF other than NO_x, SO₂, and PM as it relates to opacity.

(f) An owner or operator of a grandfathered or electing EGF with a permit application pending under subsection (a) of this section or a permit issued in accordance with subsection (a) of this section may submit an application for an EGFP in accordance with §116.917 of this title to also authorize each of the following types of facilities that are located at the same site as the EGF:

(1) a generator that does not generate electric energy for compensation and is used not more than 10% of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons per year of any air contaminant.

(g) Any application submitted in accordance with §116.917 of this title for facilities identified in subsection (e) of this section must be submitted by September 1, 2003. Any application submitted in accordance with §116.917 of this title for facilities identified in subsection (f)(1) or (2) of this section must be submitted by September 1, 2002. Any additional controls specified in an EGF permit issued in accordance with an application filed under §116.917 of this title are subject to the schedule outlined in §116.771 of this title (relating to Implementation Schedule for Additional Controls.)

(h) Emissions of air contaminants from facilities identified in subsection (f)(1) or (2) of this section must be included in each applicable emissions allowance trading program under Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading Allowances). The commission will not issue any new emissions allowance for the emissions of any air contaminant from such a facility.

(i) All applications for an EGFP shall be submitted under the seal of a Texas licensed professional engineer if required by §116.110(e) of this title (relating to Applicability).

Adopted May 22, 2002

Effective June 12, 2002

§116.912. Electing Electric Generating Facilities.

An electing electric generating facility (EGF) may opt out of the requirements of this subchapter under the following conditions.

(1) The electing EGF must notify the commission of its intent to opt out prior to the beginning of the next control period. The decision to opt out of the requirements of this subchapter will become effective at the beginning of the control period that follows notification to the commission.

(2) The electing EGF may not opt out during a control period.

(3) Once the electing EGF has opted out, all of the following apply:

(A) all allowances for the electing EGF will be voided by the commission and may not be banked for subsequent use;

(B) no allowances will be allocated for subsequent control periods;

(C) the electing EGF may not participate in the emissions banking and trading of allowances at any future date;

(D) the owner or operator shall request an alteration to the existing New Source Review permit to remove the conditions referencing the electric generating facility permit.

Adopted December 16, 1999

Effective January 11, 2000

§116.913. General and Special Conditions.

(a) The following general conditions shall be applicable to every electric generating facility permit (EGFP) unless otherwise specified in the permit.

(1) A permit issued under this subchapter may authorize the following:

(A) for grandfathered natural gas-fired electric generating facilities (EGFs), emissions of all air contaminants;

(B) for grandfathered coal-fired EGFs, nitrogen oxides (NO_x) emissions, sulfur dioxide (SO₂) emissions, and particulate matter (PM) through opacity limitations as specified in §111.111 of this title (relating to Requirements for Specified Sources);

(C) for electing natural gas-fired EGFs, allowances for NO_x emissions;

(D) for electing coal-fired EGFs, allowances for NO_x emissions, allowances for SO₂ emissions, and PM through opacity limitations as specified in §111.111 of this title; and

(E) for facilities identified in §116.917(a) of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites), emissions of all criteria pollutants.

(2) Permits for grandfathered facilities as defined in §116.10 of this title (relating to General Definitions) at sites with grandfathered or electing EGFs and permitted under Subchapter H of this chapter (relating to Permits for Grandfathered Facilities) may be consolidated with a permit issued under this subchapter.

(3) The owner or operator of a grandfathered EGF, an electing EGF, and if applicable, any facility included in an EGFP under §116.917 of this title, must comply with Chapter 101, Subchapter H, Division 2 of this title (relating to Emissions Banking and Trading of Allowances) including the requirement to maintain allowances in a compliance account. Allowances may be transferred in accordance with §101.335 of this title (relating to Allowance Banking and Trading).

(4) Mass emission monitoring and reporting shall be conducted in accordance with §116.914 of this title (relating to Emissions Monitoring and Reporting Requirements).

(5) On June 1 after every control period, the owner or operator shall hold a quantity of allowances for emissions of NO_x and, where applicable, SO₂, in its compliance account that is equal to or greater than the total emissions of that air contaminant emitted during the prior control period for each EGF permitted in accordance with §116.911(a) and (b) of this title (relating to Electric Generating Facility Permit Application) and for each facility permitted in accordance with §116.917 of this title.

(6) Owners or operators shall submit a report of the amount of emissions of each allocated air contaminant, from the prior control period to the Air Permits Division consistent with the requirements of §101.336(b) of this title (relating to Emission Monitoring, Compliance Demonstration, and Reporting).

(7) Coal-fired grandfathered and electing EGFs must meet the opacity limitations of §111.111 of this title.

(8) Natural gas-fired EGFs that were designed to also burn fuel oil may burn any American Society for Testing and Materials (ASTM) grade fuel oil or mixture of ASTM grade fuel oils containing not more than 0.7% sulfur by weight as determined by ASTM Method D 396. Burning of fuel oil does not relieve the owner or operator of the EGF from the responsibility to comply with the emission limitations, allowances, or conditions of any permit or state or federal regulation. The burning of waste or used oils is not authorized by this subchapter.

(9) Owners or operators of natural gas fired EGFs that were designed to also burn fuel oil shall submit an annual report for the EGFs that burned fuel oil during each control period. The report shall include the names of the unit(s) burning fuel oil, the date(s) that fuel oil is burned, the amount of fuel oil burned, and the ASTM grade(s) of the fuel oil or fuel oil mixture that is burned. This report shall be included with the report required by §101.336(b) of this title (relating to Emission Monitoring, Compliance Demonstration, and Reporting).

(b) Special conditions may be included in the EGFP.

Adopted May 22, 2002

Effective June 12, 2002

§116.914. Emissions Monitoring and Reporting Requirements.

(a) Grandfathered or electing electric generating facilities (EGF) subject to 40 Code of Federal Regulations Part 75, effective June 25, 1999 (40 CFR Part 75) shall do the following.

(1) For grandfathered or electing EGFs subject to the requirements of 40 CFR Part 75, concerning Continuous Emission Monitoring, all monitoring systems must comply with the initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing specified in 40 CFR Part 75.

(2) For grandfathered and electing EGFs subject to 40 CFR Part 75, a certified monitoring system under 40 CFR Part 75 shall be used to demonstrate compliance with this subchapter.

(A) If the grandfathered or electing EGF has a flow monitor certified under 40 CFR Part 75, nitrogen oxides (NO_x) emissions in pounds per hour shall be determined using a NO_x continuous emission monitoring system (CEMS) and the flow monitor.

(B) If the grandfathered or electing EGF does not have a certified flow monitor, but does have a NO_x CEMS, NO_x emissions in pounds per hour shall be determined by multiplying pounds of NO_x per million British thermal units (lbs/MMBtu) times heat input in MMBtu per hour (MMBtu/hr). The procedures in 40 CFR Part 75, Appendix F, concerning Conversion Procedures, Section 3, shall be used to convert the measured concentration of NO_x and a diluent (carbon dioxide (CO₂) or oxygen (O₂)) into an emission rate in lbs/MMBtu. The procedures in 40 CFR Part 75, Appendix F, Section 5, shall be used to determine the hourly heat input in MMBtu/hr. These two values (lbs/MMBtu and MMBtu/hr) shall be multiplied together to determine NO_x emissions in lbs/hr.

(C) The procedures in 40 CFR Part 75, Appendix E, concerning Optional NO_x Emissions Estimation Protocol for Gas-fired Peaking Units and Oil-fired Peaking Units, may be used to estimate the NO_x emission rate.

(b) Grandfathered or electing EGFs not subject to 40 CFR Part 75 shall comply with:

(1) the initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing specified in 40 CFR Part 75; or

(2) those same requirements in 40 CFR Part 60, concerning New Source Performance Standards (40 CFR Part 60). Actual emissions must be determined by multiplying the CEMs data by an adjustment factor of 1.1 for all grandfathered and electing EGFs not using a 40 CFR Part 75 monitoring system if the CEMs exceeds 10% relative accuracy.

(3) in lieu of the monitoring required by paragraph (b)(1) or (2) of this subsection, the electric generating facility permit (EGFP) may authorize alternative monitoring to calculate mass emissions under this section. The applicant must submit the following for review of an alternative monitoring proposal:

(A) a description of the monitoring approach to be used;

(B) a description of the major components of the monitoring system, including the manufacturer, serial number of the component, the measurement span of the component, and documentation to demonstrate that the measurement span of each component is appropriate to measure all of the expected values;

(C) an estimate of the accuracy of the system and documentation to demonstrate how the estimate of accuracy was determined;

(D) a description of the tests that will be used for initial certification, initial quality assurance, periodic quality assurance, and relative accuracy; and

(E) additional information may be requested before approving a request for alternative monitoring. Alternative monitoring shall be incorporated into the EGFP.

(4) emissions in pounds per hour shall be determined using the NO_x CEMS and one of the following methods.

(A) The owner or operator may elect to comply with subsection (a)(2)(A) or (B) of this section.

(B) The grandfathered or electing EGF may use a flow monitor certified under 40 CFR Part 60 to determine emissions in pounds per hour.

(C) NO_x emissions in pounds per hour may be determined by multiplying the lbs/MMBtu times the heat input in MMBtu/hr. The procedures in 40 CFR Part 60, Appendix A, Method 19 shall be used to convert the measured concentration of NO_x and a diluent (CO_2 or O_2) into emission rates in lbs/MMBtu. The procedures in 40 CFR Part 75, Section 5, Appendix F shall be used to determine the hourly heat input in MMBtu/hr. These two values (lbs/MMBtu and MMBtu/hr) shall be multiplied together to determine NO_x emissions in lbs/hr;

(5) for grandfathered and electing EGFs with a heat input of less than 100 MMBtu/hr and for peaking units emissions in pounds per hour, may be determined using the procedures in Appendix E of 40 CFR Part 75 to estimate the emission rate.

(c) The following requirements apply to all grandfathered and electing EGFs.

(1) During a period when valid data is not being recorded by monitoring devices approved for use to demonstrate compliance with this subchapter, missing or invalid data shall be replaced with representative default data in accordance with the provisions of 40 CFR Part 75, Subpart D, concerning Missing Data Substitution Procedures.

(2) Data collected from monitoring of grandfathered and electing EGFs shall be used to calculate the actual emissions over a control period. The information in this report shall be submitted by June 30 of each year and may be submitted with the report required under §101.336(b) of this title (relating to Emission Monitoring, Compliance Demonstration, and Reporting). At a minimum, the report shall contain the following information:

(A) a description of the monitoring protocol;

(B) a completed Form AR-1, Emissions Monitoring Data Form;

(C) other information as necessary to validate the actual emissions during the prior control period, including, but not limited to, periodic calibration results and maintenance logs.

Adopted December 16, 1999

Effective January 11, 2000

§116.915. Compliance History.

For all permit reviews under this subchapter, compliance history reviews are required under Chapter 60 of this title (relating to Compliance History). However, any grandfathered natural gas-fired electric generating facility (EGF) which is considered permitted for the emissions of all air contaminants under §116.911(d) of this title (relating to Electric Generating Facility Permit Application) will be subject to a compliance history review only for a modification, or the amendment or renewal of the facility's EGF permit.

Adopted August 7, 2002

Effective August 29, 2002

§116.916. Permits for Grandfathered and Electing Electric Generating Facilities in El Paso County.

Grandfathered and electing electric generating facilities in El Paso County are not required to meet nitrogen oxides allowance requirements if the commission or EPA determines that reductions in nitrogen oxides emissions in the El Paso Region otherwise required by this subchapter would result in increased ambient ozone levels in El Paso County.

Adopted December 16, 1999

Effective January 11, 2000

§116.917. Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites.

(a) Any application for an electric generating facility permit (EGFP) for additional criteria pollutants from grandfathered coal-fired electric generating facilities (EGFs) identified in §116.911(e) of this title (relating to Electric Generating Facility Permit Application) or for grandfathered facilities identified in §116.911(f)(1) or (2) of this title (relating to Electric Generating Facility Permit Application) must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit for a grandfathered facility under this section, the owner or operator of the grandfathered facility shall submit information to the commission which demonstrates that all of the following are met.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Upon request, the commission shall consolidate an application submitted in accordance with this section with an application pending in accordance with §116.911(a) of this title.

(c) Applications submitted in accordance with this section are subject to the requirements of §116.920 of this title (relating to Public Participation for Initial Issuance).

Adopted May 22, 2002

Effective June 12, 2002

§116.918. Additional General and Special Conditions for Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites.

(a) Permits issued to facilities submitting applications under §116.917 of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites) may contain general and special conditions. The holders of a permit under this subchapter shall comply with any and all such conditions.

(b) General conditions. Holders of permits issued to facilities submitting applications in accordance with §116.917 of this title shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Sampling requirements.

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

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

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

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

(3) Recordkeeping. The permit holder shall:

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

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

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

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

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

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

(5) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for upset and maintenance in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements).

(6) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit.

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

(C) Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

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

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

(2) Special 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 in accordance with Subchapter F of this chapter (relating to Standard Permits); or

(ii) a permit by rule 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, Section 112(g), 40 CFR Part 63)); or

(II) the provisions in Subchapter B, Division 5 of this chapter (relating to Nonattainment Review) and Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

Adopted May 22, 2002

Effective June 12, 2002

§116.919. Additional Requirements for Grandfathered Electric Generating Facility Permit Applications.

In addition to complying with all applicable requirements of this subchapter, any application for a new grandfathered electric generating facility permit under Texas Health and Safety Code, TCAA, §382.05185(c) and (d) (relating to Electric Generating Facility Permits) for auxiliary combustors and coal-fired units only must include emissions from the facility resulting from any associated dockside vessel operations. These emissions must comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution control practices.

Adopted August 21, 2002

Effective September 12, 2002

§116.920. Public Participation for Initial Issuance.

(a) An applicant for an electric generating facility permit (EGFP) shall publish notice of intent to obtain the permit in accordance with Chapter 39 of this title (relating to Public Notice).

(b) Public notice for an EGFP may be combined with the public notice for a voluntary emission reduction permit, under Chapter 116, Subchapter H of this title (relating to Voluntary Emission Reduction Permits).

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

(d) Any hearing regarding initial issuance of an EGFP shall be conducted under the procedures in §116.921 of this title (relating to Notice and Comment Hearings for Initial Issuance) and not under the APA.

(e) Responses to public comments and the notice of the commission's decision to issue or deny an EGFP shall be conducted under the procedures in §116.922 of this title (relating to Notice of Final Action).

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

Adopted December 16, 1999

Effective January 11, 2000

§116.921. Notice and Comment Hearings for Initial Issuance.

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

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a grandfathered or electing electric generating facility (EGF) or a facility described in §116.911(f) of this title (relating to Electric Generating Facility Permit Application) is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered or electing EGF or a facility described in §116.911(f) of this title, and that request is reasonable, the commission shall hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft EGFP must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the

grandfathered or electing EGF or a facility described in §116.911(f) of this title is located, or in the municipality nearest to the location of the grandfathered or electing EGF or a facility described in §116.911(f) of this title. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

- (1) the time, place, and nature of the hearing;
 - (2) a brief description of the purpose of the hearing; and
 - (3) the name and phone number of the commission office to be contacted to verify that a hearing will be held.
- (d) Any person, including the applicant, may submit oral or written statements and data concerning the draft EGFP.
- (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 any hearing.
 - (3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.
- (e) A tape recording or written transcript of the hearing must be made available to the public.
- (f) Any person, including the applicant, who believes that any condition of the draft EGFP is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.
- (g) Any supporting materials for comments submitted under subsection (f) of this section must be included in full and may not be incorporated by reference, unless the materials are one of the following:
- (1) already part of the administrative record in the same proceedings;
 - (2) state or federal statutes and regulations;
 - (3) EPA documents of general applicability; or
 - (4) other generally available reference materials.
- (h) The commission shall keep a record of all comments received and issues raised in the hearing. This record is available to the public.

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

(j) The commission shall respond to comments consistent with §116.922 of this title (relating to Notice of Final Action).

Adopted May 22, 2002

Effective June 12, 2002

§116.922. Notice of Final Action.

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

(b) The notice must include the following:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions of the draft electric generating facility permit and the reasons for the change;

(3) a statement that any person affected by the decision of the commission may petition for rehearing under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032 (relating to Appeal of Commission Action).

Adopted December 16, 1999

Effective January 11, 2000

§116.926. Permit Fee.

(a) Fees required. Any person who applies for a permit in accordance with §116.917 of this title (relating to Electric Generating Facility Permit Application for Certain Grandfathered Coal-Fired Electric Generating Facilities and Certain Grandfathered Facilities Located at Electric Generating Facility Sites) must remit a fee of \$450 at the time of application for such permit. If the facility is a small business stationary source facility, as defined in TCAA, §382.0365(h), the fee shall be \$100.

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

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

Adopted May 22, 2002

Effective June 12, 2002

§116.928. Delegation.

The commission delegates to the executive director the authority to take any action on a permit issued under this subchapter. Section 116.922(b)(3) of this title (relating to Notice of Final Action) provides notification that any person affected by a decision of the commission may petition for rehearing. Notwithstanding §116.922(b)(3) of this title, any Notice of Final Action sent regarding a permit action under this subchapter will state that a person affected by a decision of the executive director may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) rather than a petition for rehearing.

Adopted May 22, 2002

Effective June 12, 2002

§116.930. Amendments and Alterations of Permits Issued Under this Subchapter.

The owner or operator planning a modification of a facility permitted under this subchapter must comply with Subchapter B of this chapter (relating to New Source Review Permits) before work is begun on the construction of the modification. Amendments and alterations for permits issued in accordance with this subchapter are subject to the requirements of Subchapter B of this chapter.

Adopted May 22, 2002

Effective June 12, 2002

§116.931. Renewal.

Electric generating facility permits shall be renewed in accordance with Chapter 116, Subchapter D of this title (relating to Permit Renewals).

Adopted December 16, 1999

Effective January 11, 2000