

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§122.10, 122.12, 122.120, 122.122, 122.130, 122.132, 122.142, 122.145, and 122.148; and the repeal of §§122.420, 122.422, 122.424, 122.426, and 122.428, *without changes* to the proposal as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6931) and, therefore, these sections will not be republished.

The changes adopted in this rulemaking will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas Federal Operating Permits (FOP) Program. A request will be submitted to the EPA to withdraw from consideration the amendments to §122.122 submitted on April 16, 2014, as a revision to the state implementation plan (SIP).

### **Background and Summary of the Factual Basis for the Adopted Rules**

TCEQ is the permitting authority responsible for implementing the FOP Program (also referred to as the Title V Permits Program) in Texas. Chapter 122 contains the framework and criteria that identify which sources are required to obtain a federal operating permit, identify the applicable requirements to be included in the permit, and establish other details about applying for and complying with a federal operating permit. In recent years there have been significant changes to several major federal regulatory initiatives as a result of court actions and new EPA rulemaking. Revisions to Chapter 122 are necessary in order to reflect up-to-date requirements associated with these federal regulations as they relate to the FOP Program.

The purpose of a federal operating permit is to improve compliance with air pollution laws and regulations by recording in one document all the air pollution control requirements that apply to a source. This gives regulators, site owners or operators, and members of the public a clear picture of what the facility is required to do to meet regulatory standards. A federal operating permit also requires the source to make regular reports on how it is meeting its emission control requirements and maintaining compliance with applicable regulations.

The federal initiatives or regulations addressed in this rulemaking include the Clean Air Interstate Rule (CAIR), the Cross-State Air Pollution Rule (CSAPR), and the permitting of greenhouse gases (GHGs) under Prevention of Significant Deterioration (PSD) and under the FOP Program. More specifically, the changes in this rulemaking are intended to address the vacatur of CAIR; the replacement of CAIR with CSAPR; and the 2014 Supreme Court decision which partially struck down certain requirements for the permitting of GHGs.

#### *CAIR and CSAPR*

CAIR was a regulation developed by the EPA to address interstate transport of emissions by reducing power plant emissions that the EPA determined were contributing to ozone or fine particle pollution in downwind states. In December 2008, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) found that CAIR did not meet the requirements of the Federal Clean Air Act (FCAA). The DC Circuit struck down CAIR,

but left existing CAIR programs in place temporarily while directing EPA to replace them with a new rule consistent with the FCAA. In response, the EPA developed CSAPR, which effectively replaced CAIR when promulgated on August 8, 2011. However, in August 2012, the DC Circuit also vacated CSAPR. In April 2014, the Supreme Court overturned the DC Circuit's 2012 ruling and reinstated CSAPR. Because federal regulations specify that CSAPR is an applicable requirement under the FOP Program, it is necessary to revise Chapter 122 to add CSAPR to the definition of "Applicable requirement." This ensures that TCEQ's FOP Program rules and operating permits issued by TCEQ are consistent with current federal requirements, and ensure that TCEQ maintains overall FOP Program approval.

#### *GHG Permitting under the FOP Program*

In March 2014, the TCEQ adopted rules in 30 TAC Chapters 116 and 122 to provide for the permitting of GHGs, as directed by House Bill (HB) 788 (83rd Texas Legislature, 2013). However, in June 2014, the Supreme Court in *Utility Air Regulatory Group v. EPA (UARG)*, 134 S.Ct. 2427 (2014) struck down portions of the EPA's regulations relating to permitting of GHGs. The Supreme Court ruled that the EPA could not require permitting of GHG emissions under the PSD or Title V (FOP) program based on emissions of GHGs alone. However, the Supreme Court also ruled that if a project triggered PSD review as the result of emissions of non-GHG criteria pollutants, the permit review could include consideration and appropriate limitations on GHG emissions. A source which becomes subject to PSD review for a particular pollutant due to emissions of a different regulated new source review pollutant, is informally known as an "anyway source."

As a result of the Supreme Court ruling, the 2014 revisions to Chapter 122 which established the applicability of federal operating permit requirements for major sources of GHG are no longer applicable. These GHG-related requirements need to be deleted from Chapter 122 to avoid unnecessary confusion, maintain consistency with current federal requirements, and to ensure that TCEQ maintains FOP Program approval. In addition, HB 788 and corresponding Texas Health and Safety Code, §382.05102(e) require that the commission repeal rules requiring the permitting of GHG emissions, if emissions of GHGs are no longer required to be authorized under federal law. The adopted revisions are consistent with that statutory requirement.

Note that the adopted revisions to Chapter 122 relate to the relevance of GHG emissions at the site when determining the applicability of federal operating permit requirements. The adopted revisions are intended to ensure that emissions of GHGs alone do not cause a site to become subject to federal operating permit requirements. However, this does not necessarily mean that a federal operating permit will never contain terms and conditions which relate to emissions of GHGs. In situations where an applicable requirement includes a GHG emission standard, or a project has triggered PSD review due to emissions of criteria pollutants, the permitting authority may still establish GHG-related requirements, and all terms and conditions of a PSD permit (including any limitations or conditions relating to emissions of GHGs) are still considered applicable requirements under the FOP Program.

### *Other Changes*

The commission has also adopted other minor amendments to Chapter 122 to correct outdated or inaccurate references to other commission rules and federal statutes, and to correct various grammatical and style errors.

### **Section by Section Discussion**

#### *§122.10, General Definitions*

The commission revises the definition of "Air pollutant" at §122.10(1). The adopted change removes the portion of this definition at §122.10(1)(G) which covers GHGs. The effect of the adopted change is that GHGs will no longer be considered an air pollutant for purposes of determining the applicability of Chapter 122 federal operating permit requirements.

The commission revises the definition of "Applicable requirement" at §122.10(2)(I)(iii). The adopted change to §122.10(2)(I)(iii) removes the reference to the federal CAIR program as an applicable standard or requirement, and replaces it with a reference to the federal CSAPR regulation.

The commission deletes the definition of "Carbon dioxide equivalent (CO<sub>2</sub>e) emissions" under §122.10(3). This definition is no longer relevant to the applicability of Chapter 122 because the adopted rule changes remove consideration of GHG emissions as a factor when determining applicability of federal operating permit requirements. The commission also renumbers existing definitions §122.10(4) - (30) to maintain correct

sequencing after the deletion of existing §122.10(3).

The commission revises the definition of "Major source" under renumbered §122.10(13), to remove language in subparagraphs (C) and (H) which specifies the threshold quantities of GHG emissions which trigger the requirement to obtain a federal operating permit. In addition, to maintain consistency with federal regulations pertaining to federal operating permit requirements, the commission adopts a revision to the list of source categories which are required to include fugitive emissions when determining if a facility is a major source. The revision to renumbered §122.10(13)(C)(xx) clarifies that certain ethanol production facilities which produce ethanol by natural fermentation are excluded from the source category of chemical process plants. The EPA adopted this change to the corresponding 40 Code of Federal Regulations (CFR) Parts 70 and 71 on May 1, 2007 (72 FR 24060).

#### *§122.12, Acid Rain Definitions*

The commission deletes the definition of "Clean Air Interstate Rule permit" at §122.12(3). This definition is no longer necessary, as TCEQ will no longer be issuing CAIR permits under this chapter. The commission renumbers existing definition §122.12(4) to account for the deletion of §122.12(3).

#### *§122.120, Applicability*

The commission deletes §122.120(a)(5) and (6), which contain language relating to the applicability of Chapter 122 to units covered by CAIR. This language is no longer

necessary as CAIR is no longer effective. The commission has not added any references to CSAPR in this applicability language because the requirement to obtain a federal operating permit is not based directly or solely on the CSAPR status of the site.

*§122.122, Potential to Emit*

The commission adopts a minor grammatical correction to §122.122(a). The commission also deletes language in §122.122(e)(3) which provides for the certified registration of GHG emissions. This language is no longer necessary because, in accordance with the *UARG* decision, a site's GHG emissions would no longer be a sole determining factor for the applicability of federal operating permit requirements, so there would be no need for a site to use this method of limiting potential to emit for GHGs. Section 122.122(e)(3) was originally adopted and submitted to the EPA as a revision to the SIP on April 16, 2014; however, because of the *UARG* decision, the commission requested, and the EPA agreed, to take no action on this rule provision. (79 FR 66626, 66629). TCEQ will submit a formal request to withdraw §122.122(e)(3) as submitted in 2014 from consideration as a SIP revision to ensure that the SIP is consistent with the deletions to the rule text which are adopted in this rulemaking.

*§122.130, Initial Application Due Dates*

The commission deletes language in §122.130(b)(3) relating to the deadline for the owner or operator of a site to submit a permit application as a result of rulemaking which adds GHG sources to the FOP Program. This language is no longer necessary because emissions of GHGs alone will no longer trigger the requirement for an owner or operator to apply

for a federal operating permit.

*§122.132, Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits*

The commission deletes §122.132(d) and (e)(7), which contain language relating to an outdated phased permitting option which was repealed in 2003. The commission re-letters or renumbers the remaining subsections and paragraphs in the section as needed to reflect the adopted deletions and maintain sequential order. The commission also revises re-lettered §122.132(d)(3) to remove a phrase referencing the repealed phased permitting option.

*§122.142, Permit Content Requirements*

The commission deletes language from §122.142(b)(2)(B) and (d) that relates to the phased permitting option repealed in 2003. The commission re-letters the remaining subsections, to reflect the adopted deletion of §122.142(d). The commission also revises re-lettered §122.142(d)(1) and (2) to update cross-references to certain rules within adopted §122.132(d) which has been re-lettered as a result of adopted revisions to that section.

*§122.145, Reporting Terms and Conditions*

The commission revises §122.145(2)(D) to replace outdated references to 30 TAC §101.6 and §101.7. The current corresponding references are 30 TAC §101.201, Emissions Event Reporting and Recordkeeping Requirements, and 30 TAC §101.211, Scheduled



Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements, respectively.

*§122.148, Permit Shield*

The commission revises §122.148(b) to update cross-references to rule subsections and paragraphs within adopted §122.132(d) which have been re-lettered or renumbered as a result of adopted revisions to that section.

*Subchapter E, Acid Rain Permits and Clean Air Interstate Rule*

*Division 2, Clean Air Interstate Rule*

The commission adopts the repeal of §§122.420, 122.422, 122.424, 122.426, and 122.428 which contain various requirements relating to applications for and contents of CAIR permits. As CAIR is no longer in effect, it is no longer necessary for Chapter 122 to maintain these requirements.

**Final Regulatory Impact Analysis Determination**

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirements to prepare a Regulatory Impact Analysis.

A "Major environmental rule" means a rule, the specific intent of which is to protect the

environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted revisions to Chapter 122 is to reflect current applicable requirements associated with federal rulemakings and court decisions as they relate to the FOP Program.

Due to significant changes to several major federal regulations as a result of court actions and EPA rulemaking, revisions to Chapter 122 are necessary in order to reflect up-to-date permitting requirements associated with these new or revised federal regulations. The federal regulations addressed in this rulemaking are CAIR, CSAPR, and GHG permitting. All of these regulations, and the overall FOP Program, were developed by the EPA to implement or satisfy provisions of the FCAA.

The adopted rulemaking revises Chapter 122 to: 1) remove requirements associated with CAIR; which was an emission trading rule that has been vacated by federal courts and replaced with CSAPR; 2) add CSAPR as a new applicable requirement to Chapter 122; and 3) remove references to GHG permitting under Chapter 122, as a 2014 Supreme Court case overturned EPA's regulations requiring a federal operating permit for GHG emissions. Other minor changes to Chapter 122 correct outdated cross-references and grammatical errors. The adopted rule changes are intended to ensure that the Texas FOP Program is consistent with current federal requirements.

Because the rules place no involuntary requirements on the regulated community, the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the amendments place additional financial burdens on the regulated community beyond what is already required by federal regulations relating to the implementation of CSAPR and the FOP Program.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state or federal program.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments regarding the Draft Regulatory Impact Analysis Determination were received.

### **Takings Impact Assessment**

The commission evaluated the adopted rules and performed an analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The specific purpose of the adopted rulemaking is to revise Chapter 122 in order to reflect up-to-date requirements associated with these federal regulations as they relate to the FOP Program. This includes removing requirements associated with CAIR; adding CSAPR as a new applicable requirement to Chapter 122; removing references to GHG permitting under Chapter 122; and correcting outdated cross-references and grammatical errors. The adopted rule changes are intended to ensure that the Texas FOP Program is consistent with current federal requirements.

Promulgation and enforcement of the adopted rules would not be a statutory or a constitutional taking of private real property. These rules are not burdensome, restrictive, or limiting of rights to private real property because the adopted rules do not affect a landowner's rights in private real property. These rules do not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the adopted rules would not constitute a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a

consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The adopted rulemaking updates rules governing the TCEQ's FOP Program to reflect recent developments in federal regulations and programs such as CAIR, CSAPR, and GHG permitting. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments regarding the CMP were received.

### **Effect on Sites Subject to the Federal Operating Permits Program**

The adopted rule changes will update the applicability provisions of Chapter 122 to clarify that owners or operators of sites subject to the FOP Program will not be required to obtain federal operating permits as a result of GHG emissions, and that CAIR is no longer an applicable requirement for purposes of the FOP Program. Since the EPA has determined that CSAPR is an applicable requirement under the FOP Program, owners or operators of sites subject to CSAPR will need to revise their federal operating permits to incorporate the applicable CSAPR requirements.

### **Public Comment**

The commission offered a public hearing on the proposed rules in Austin, Texas on October 4, 2016. The comment period closed on October 10, 2016. No oral or written comments on the proposed rules were received.

## **SUBCHAPTER A: DEFINITIONS**

### **§122.10, §122.12**

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which



authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The adopted amendments implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

#### **§122.10. General Definitions.**

The definitions in the Texas Clean Air Act, Chapter 101 of this title (relating to General Air Quality Rules), and Chapter 3 of this title (relating to Definitions) apply to this chapter. In addition, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) Air pollutant--Any of the following regulated air pollutants:

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a national ambient air quality standard has been promulgated;

(D) any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111 (Standards of Performance for New Stationary Sources);

(E) unless otherwise specified by the United States Environmental Protection Agency (EPA) by rule, any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI (Stratospheric Ozone Protection); or

(F) any pollutant subject to a standard promulgated under FCAA, §112 (Hazardous Air Pollutants) or other requirements established under FCAA, §112, including §112(g), (j), and (r), including any of the following:

(i) any pollutant subject to requirements under FCAA, §112(j).

If the EPA fails to promulgate a standard by the date established under FCAA, §112(e),

any pollutant for which a subject site would be major shall be considered to be regulated on the date 18 months after the applicable date established under FCAA, §112(e); and

(ii) any pollutant for which the requirements of FCAA, §112(g)(2) have been met, but only with respect to the individual site subject to FCAA, §112(g)(2) requirement.

(2) Applicable requirement--All of the following requirements, including requirements that have been promulgated or approved by the United States Environmental Protection Agency (EPA) through rulemaking at the time of issuance but have future-effective compliance dates:

(A) all of the requirements of Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter) as they apply to the emission units at a site;

(B) all of the requirements of Chapter 112 of this title (relating to Control of Air Pollution from Sulfur Compounds) as they apply to the emission units at a site;

(C) all of the requirements of Chapter 113 of this title (relating to Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants), as they apply to the emission units at a site;

(D) all of the requirements of Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) as they apply to the emission units at a site;

(E) all of the requirements of Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) as they apply to the emission units at a site;

(F) the following requirements of Chapter 101 of this title (relating to General Air Quality Rules):

(i) Chapter 101, Subchapter A, §101.1 of this title (relating to Definitions), insofar as the terms defined in this section are used to define the terms used in other applicable requirements;

(ii) Chapter 101, Subchapter A, §101.3 and §101.10 of this title (relating to Circumvention; and Emissions Inventory Requirements);

(iii) Chapter 101, Subchapter A, §101.8 and §101.9 of this title (relating to Sampling; and Sampling Ports) if the commission or the executive director has requested such action;

(iv) Chapter 101, Subchapter F, §§101.201, 101.211, 101.221, 101.222, and 101.223 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; Operational Requirements; Demonstrations; and Actions to Reduce Excessive Emissions); and

(v) Chapter 101, Subchapter H of this title (relating to Emissions Banking and Trading) as it applies to the emission units at a site;

(G) any site-specific requirement of the state implementation plan;

(H) all of the requirements under Chapter 106, Subchapter A of this title (relating to General Requirements), or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and any term or condition of any preconstruction permit;

(I) all of the following federal requirements as they apply to the emission units at a site:

(i) any standard or other requirement under Federal Clean Air Act (FCAA), §111 (Standards of Performance for New Stationary Sources);

(ii) any standard or other requirement under FCAA, §112  
(Hazardous Air Pollutants);

(iii) any standard or other requirement of the Acid Rain  
program or Cross-State Air Pollution Rule;

(iv) any requirements established under FCAA, §504(b) or  
§114(a)(3) (Monitoring and Analysis; or Inspections, Monitoring, and Entry);

(v) any standard or other requirement governing solid waste  
incineration under FCAA, §129 (Solid Waste Combustion);

(vi) any standard or other requirement for consumer and  
commercial products under FCAA, §183(e) (Control of Emissions from Certain Sources);

(vii) any standard or other requirement under FCAA, §183(f)  
(Tank Vessel Standards);

(viii) any standard or other requirement under FCAA, §328 (Air  
Pollution from Outer Continental Shelf Activities);

(ix) any standard or other requirement under FCAA, Title VI (Stratospheric Ozone Protection), unless EPA has determined that the requirement need not be contained in a permit;

(x) any increment or visibility requirement under FCAA, Title I, Part C (Prevention of Significant Deterioration of Air Quality) or any national ambient air quality standard, but only as it would apply to temporary sources permitted under FCAA, §504(e) (Temporary Sources); and

(xi) any FCAA, Title I, Part C (Prevention of Significant Deterioration) permit issued by EPA; and

(J) the following are not applicable requirements under this chapter, except as noted in subparagraph (I)(x) of this paragraph:

(i) any state or federal ambient air quality standard;

(ii) any net ground level concentration limit;

(iii) any ambient atmospheric concentration limit;

(iv) any requirement for mobile sources;

(v) any asbestos demolition or renovation requirement under 40 Code of Federal Regulations (CFR) Part 61, Subpart M (National Emissions Standards for Asbestos);

(vi) any requirement under 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(vii) any state only requirement (including §111.131 of this title (relating to Definitions), §111.133 of this title (relating to Testing Requirements), §111.135 of this title (relating to Control Requirements for Surfaces with Coatings Containing Lead), §111.137 of this title (relating to Control Requirements for Surfaces with Coatings Containing Less Than 1.0% Lead), and §111.139 of this title (relating to Exemptions)).

(3) Continuous compliance determination method--For purposes of Subchapter G of this chapter (relating to Periodic Monitoring and Compliance Assurance Monitoring), a method, specified by an applicable requirement, which satisfies the following criteria:

(A) the method is used to determine compliance with an emission limitation or standard on a continuous basis consistent with the averaging period established for the emission limitation or standard; and



(B) the method provides data either in units of the emission limitation or standard or correlated directly with the emission limitation or standard.

(4) Control device--For the purposes of compliance assurance monitoring applicability, specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), the control device definition specified in 40 Code of Federal Regulations Part 64 (Compliance Assurance Monitoring) applies.

(5) Deviation--Any indication of noncompliance with a term or condition of the permit as found using compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information.

(6) Deviation limit--A designated value(s) or condition(s) which establishes the boundary for an indicator of performance. Operation outside of the boundary of the indicator of performance shall be considered a deviation.

(7) Draft permit--The version of a permit available for the 30-day comment period under public announcement or public notice and affected state review. The draft permit may be the same document as the proposed permit.

(8) Emission unit--A discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants, including appurtenances.

(A) A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emission unit. The fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process.

(B) The term may also be used in this chapter to refer to a group of similar emission units.

(C) This term is not meant to alter or affect the definition of the term "unit" for purposes of the Acid Rain Program.

(9) Federal Clean Air Act, §502(b)(10) changes--Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(10) Final action--Issuance or denial of the permit by the executive director.

(11) General operating permit--A permit issued under Subchapter F of this chapter (relating to General Operating Permits), under which multiple similar stationary sources may be authorized to operate.

(12) Large pollutant-specific emission unit--An emission unit with the potential to emit, taking into account control devices, the applicable air pollutant in an amount equal to or greater than 100% of the amount, in tons per year, required for a source to be classified as a major source, as defined in this section.

(13) Major source--

(A) For pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate the following quantities:

(i) ten tons per year (tpy) or more of any single hazardous air pollutant listed under Federal Clean Air Act (FCAA), §112(b) (Hazardous Air Pollutants);

(ii) 25 tpy or more of any combination of hazardous air pollutant listed under FCAA, §112(b); or

(iii) any quantity less than those identified in clause (i) or (ii) of this subparagraph established by the United States Environmental Protection Agency (EPA) through rulemaking.

(B) For radionuclides regulated under FCAA, §112, the term "major source" has the meaning specified by the EPA by rule.

(C) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in the North American Industry Classification System codes 312140 or 325193);

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (Btu) per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xxiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) any stationary source category regulated under FCAA, §111 (Standards of Performance for New Stationary Sources) or §112 for which the EPA has made an affirmative determination under FCAA, §302(j) (Definitions).

(D) Any site, except those exempted under FCAA, §182(f) (NO<sub>x</sub> Requirements), which, in whole or in part, is a major source under FCAA, Title I, Part D (Plan Requirements for Nonattainment Areas), including the following:

(i) any site with the potential to emit 100 tpy or more of volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) in any ozone nonattainment area classified as "marginal or moderate";

(ii) any site with the potential to emit 50 tpy or more of VOC or NO<sub>x</sub> in any ozone nonattainment area classified as "serious";

(iii) any site with the potential to emit 25 tpy or more of VOC or NO<sub>x</sub> in any ozone nonattainment area classified as "severe";

(iv) any site with the potential to emit ten tpy or more of VOC or NO<sub>x</sub> in any ozone nonattainment area classified as "extreme";

(v) any site with the potential to emit 100 tpy or more of carbon monoxide (CO) in any CO nonattainment area classified as "moderate";

(vi) any site with the potential to emit 50 tpy or more of CO in any CO nonattainment area classified as "serious";

(vii) any site with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10) in any PM-10 nonattainment area classified as "moderate";

(viii) any site with the potential to emit 70 tpy or more of PM-10 in any PM-10 nonattainment area classified as "serious"; and

(ix) any site with the potential to emit 100 tpy or more of lead in any lead nonattainment area.

(E) The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source under subparagraph (D) of this paragraph, unless the stationary source belongs to one of the categories of stationary sources listed in subparagraph (C) of this paragraph.

(F) Any temporary source which is located at a site for less than six months shall not affect the determination of a major source for other stationary sources at a site under this chapter or require a revision to the existing permit at the site.



(G) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources under subparagraph (A) of this paragraph.

(14) Notice and comment hearing--Any hearing held under this chapter. Hearings held under this chapter are for the purpose of receiving oral and written comments regarding draft permits.

(15) Permit or federal operating permit--

(A) any permit, or group of permits covering a site, that is issued, renewed, or revised under this chapter; or

(B) any general operating permit issued, renewed, or revised by the executive director under this chapter.

(16) Permit anniversary--The date that occurs every 12 months after the initial permit issuance, the initial granting of the authorization to operate, or renewal.

(17) Permit application--An application for an initial permit, permit revision, permit renewal, permit reopening, general operating permit, or any other similar application as may be required.

(18) Permit holder--A person who has been issued a permit or granted the authority by the executive director to operate under a general operating permit.

(19) Permit revision--Any administrative permit revision, minor permit revision, or significant permit revision that meets the related requirements of this chapter.

(20) Potential to emit--The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration established under §106.6 of this title (relating to Registration of Emissions), §116.611 of this title (relating to Registration to Use a Standard Permit), or §122.122 of this title (relating to Potential to Emit), or a permit by rule under Chapter 106 of this title (relating to Permits by Rule) or other new source review permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the United States Environmental Protection Agency. This term does not alter or affect

the use of this term for any other purposes under the Federal Clean Air Act (FCAA), or the term "capacity factor" as used in Acid Rain provisions of the FCAA or the Acid Rain rules.

(21) Preconstruction authorization--Any authorization to construct or modify an existing facility or facilities under Chapter 106 and Chapter 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification). In this chapter, references to preconstruction authorization will also include the following:

(A) any requirement established under Federal Clean Air Act (FCAA), §112(g) (Modifications); and

(B) any requirement established under FCAA, §112(j) (Equivalent Emission Limitation by Permit).

(22) Predictive emission monitoring system--A system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(23) Proposed permit--The version of a permit that the executive director forwards to the United States Environmental Protection Agency for a 45-day review period. The proposed permit may be the same document as the draft permit.

(24) Provisional terms and conditions--Temporary terms and conditions, established by the permit holder for an emission unit affected by a change at a site, or the promulgation or adoption of an applicable requirement or state-only requirement, under which the permit holder is authorized to operate prior to a revision or renewal of a permit or prior to the granting of a new authorization to operate.

(A) Provisional terms and conditions will only apply to changes not requiring prior approval by the executive director.

(B) Provisional terms and conditions shall not authorize the violation of any applicable requirement or state-only requirement.

(C) Provisional terms and conditions shall be consistent with and accurately incorporate the applicable requirements and state-only requirements.

(D) Provisional terms and conditions for applicable requirements and state-only requirements shall include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards;

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph; and

(iii) where applicable, the specific regulatory citations identifying any requirements that no longer apply.

(25) Renewal--The process by which a permit or an authorization to operate under a general operating permit is renewed at the end of its term under §§122.241, 122.501, or 122.505 of this title (relating to Permit Renewals; General Operating Permits; or Renewal of the Authorization to Operate Under a General Operating Permit).

(26) Reopening--The process by which a permit is reopened for cause and terminated or revised under §122.231 of this title (relating to Permit Reopenings).

(27) Site--The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). A research and development operation and a collocated manufacturing facility shall be considered a single site if they each have the same two-digit Major Group Standard Industrial Classification code (as described in the Standard Industrial Classification Manual, 1987) or the research and development operation is a support facility for the manufacturing facility.

(28) State-only requirement--Any requirement governing the emission of air pollutants from stationary sources that may be codified in the permit at the discretion of the executive director. State-only requirements shall not include any requirement required under the Federal Clean Air Act or under any applicable requirement.

(29) Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant. Nonroad engines, as defined in 40 Code of Federal Regulations Part 89 (Control of Emissions from New and In-use Nonroad Engines), shall not be considered stationary sources for the purposes of this chapter.

**§122.12. Acid Rain Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Acid Rain permit--The legally binding and segregable portion of the federal operating permit issued under this chapter, including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

(2) Acid Rain Program--The national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Federal Clean Air Act, Title IV, contained in 40 Code of Federal Regulations Parts 72 - 78.

(3) Designated representative--The responsible individual authorized by the owners and operators of an affected source and of all affected units at the site, as evidenced by a certificate of representation submitted in accordance with the Acid Rain Program, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Such matters include, but are not limited to: the holdings, transfers, or dispositions of allowances allocated to a unit; and the submission of or compliance with Acid Rain permits, permit applications, compliance plans, emission monitoring plans, continuous emissions monitor (CEM), and continuous opacity monitor (COM) certification notifications, CEM and COM certification and applications, quarterly monitoring and emission reports, and annual compliance certifications. Whenever the term "responsible official" is used in this chapter, it shall refer to the "designated representative" with regard to all matters under the Acid Rain Program.

## **SUBCHAPTER B: PERMIT REQUIREMENTS**

### **DIVISION 1: GENERAL REQUIREMENTS**

#### **§122.120**

##### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits;



THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendment is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

**§122.120. Applicability.**

(a) Except as identified in subsection (b) of this section, owners and operators of one or more of the following are subject to the requirements of this chapter:

(1) any site that is a major source as defined in §122.10 of this title (relating to General Definitions);

(2) any site with an affected unit as defined in 40 Code of Federal Regulations Part 72 subject to the requirements of the Acid Rain Program;

(3) any solid waste incineration unit required to obtain a permit under Federal Clean Air Act (FCAA), §129(e) (Permits); or

(4) any site that is a non-major source which the United States Environmental Protection Agency (EPA), through rulemaking, has designated as no longer exempt or no longer eligible for a deferral from the obligation to obtain a permit. For the purposes of this chapter, those sources may be any of the following:

(A) any non-major source so designated by the EPA, and subject to a standard, limitation, or other requirement under FCAA, §111 (Standards of Performance for New Stationary Sources);

(B) any non-major source so designated by the EPA, and subject to a standard or other requirement under FCAA, §112 (Hazardous Air Pollutants), except for FCAA, §112(r) (Prevention of Accidental Releases); or

(C) any non-major source in a source category designated by the EPA.

(b) The following are not subject to the requirements of this chapter:

(1) any site that is a non-major source which the EPA, through rulemaking, has designated as exempt from the obligation to obtain a permit; or

(2) any site that is a non-major source which the EPA has allowed permitting authorities to defer from the obligation to obtain a permit.

## **SUBCHAPTER B: PERMIT REQUIREMENTS**

### **DIVISION 2: APPLICABILITY**

#### **§122.122**

##### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits;

THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendment is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

**§122.122. Potential to Emit.**

(a) For purposes of determining applicability of the Federal Operating Permit Program under this chapter, the owner or operator of stationary sources without any other federally-enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable. Emission rates in new source review permits under Chapter 116 of this title (relating to

Control of Air Pollution by Permits for New Construction or Modification) and certified registrations provided for under Chapter 106 of this title (relating to Permits by Rule) or Chapter 116 of this title are also federally-enforceable emission rates.

(b) All representations in any registration of emissions under this section with regard to emissions, production or operational limits, monitoring, and reporting shall become conditions upon which the stationary source shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification, in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the stationary source.

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in §122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site.

(1) Certified registrations established prior to December 11, 2002, shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after December 11, 2002, shall be submitted no later than the date of operation.

(f) All certified registrations and records demonstrating compliance with a certified registration shall be maintained on-site and shall be provided, upon request, during regular business hours to representatives of the appropriate commission regional office and any local air pollution control agency having jurisdiction over the site. If however, the site normally operates unattended, certified registrations and records demonstrating compliance with the certified registration must be maintained at an office within Texas having day-to-day operational control of the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner.

## **SUBCHAPTER B: PERMIT REQUIREMENTS**

### **DIVISION 3: PERMIT APPLICATION**

#### **§122.130, §122.132**

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits;



THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The adopted amendments implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

**§122.130. Initial Application Due Dates.**

(a) Owners or operators of any site subject to the requirements of this chapter on February 1, 1998, shall submit abbreviated initial applications by February 1, 1998. The executive director shall inform the applicant in writing of the deadline for submitting the remaining application information.

(b) Owners and operators of sites identified in §122.120 of this title (relating to Applicability) that become subject to the requirements of this chapter after February 1, 1998 are subject to the following requirements.

(1) If the site is a new site or a site that will become subject to the program as the result of a change at the site, the owner or operator shall not operate the change, or the new emission units, before an abbreviated application is submitted under this chapter. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(2) If the site becomes subject to the program as the result of an action by the executive director or the United States Environmental Protection Agency (EPA), the owner or operator will submit an abbreviated application no later than 12 months after the action that subjects the site to the requirements of this chapter.

(c) Applications submitted under 40 Code of Federal Regulations (CFR) Part 71 (Federal Operating Permit Programs).

(1) If 40 CFR Part 71 is implemented in Texas by the EPA, applications will only be required to be submitted to the EPA.

(2) If all or part of 40 CFR Part 71 is delegated to the commission, information required by this chapter and consistent with the delegation will be required to be submitted to the commission.

**§122.132. Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits.**

(a) A permit application shall provide any information, including confidential information as addressed in Chapter 1 of this title (relating to Purpose of Rules, General Provisions), required by the executive director to determine the applicability of, or to codify, any applicable requirement or state-only requirement.

(b) An application for a general operating permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general operating permit.

(c) An applicant may submit an abbreviated initial permit application, containing only the information in this section deemed necessary by the executive director. The abbreviated application shall include at a minimum, a general application form containing identifying information regarding the site and the applicant and a certification by a responsible official. The executive director shall inform the applicant in writing of the deadline for submitting the remaining information.

(d) An application shall include, but is not limited to, the following information:

(1) a general application form and all information requested by that form;

(2) for each emission unit, information regarding the general applicability determinations, which includes the following:

(A) the general identification of each potentially applicable requirement and potentially applicable state-only requirement (e.g., New Source Performance Standards Subpart Kb);

(B) the applicability determination for each requirement identified under subparagraph (A) of this paragraph; and

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

(3) for each emission unit, information regarding the detailed applicability determinations, which includes the following:

(A) the specific regulatory citations in each applicable requirement or state-only requirement identifying the following:

(i) the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph;

(B) the basis for each applicability determination identified under subparagraph (A) of this paragraph;

(4) a compliance plan including the following information:

(A) the following statement: "As the responsible official it is my intent that all emission units shall continue to be in compliance with all applicable requirements they are currently in compliance with, and all emission units shall be in compliance by the compliance dates with any applicable requirements that become effective during the permit term.";

(B) for all emission units addressed in the application, an indication of the compliance status with respect to all applicable requirements, based on any compliance method specified in the applicable requirements and any other credible evidence or information;

(C) for any emission unit not in compliance with the applicable requirements identified in the application, the following information:

(i) the method used for assessing the compliance status of the emission unit;

(ii) a narrative description of how the emission unit will come into compliance with all applicable requirements;

(iii) a compliance schedule (resembling and at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the site is subject), including remedial measures to bring the emission unit into compliance with the applicable requirements; which shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

(iv) a schedule for the submission, at least every six months after issuance of the permit, of certified progress reports;

(D) for any emission unit requiring installation, testing, or final verification of operational status of monitoring equipment to satisfy the requirements of compliance assurance monitoring or periodic monitoring, the following information:

(i) an implementation plan and schedule for installing, testing, and performing any other appropriate activities prior to use of the monitoring; and

(ii) milestones for completing such installation, testing, or final verification;

(5) if applicable, information requested by the nationally-standardized forms for the acid rain portions of permit applications, and compliance plans required by the acid rain program;

(6) if applicable, a statement certifying that a risk management plan, or a schedule to submit a risk management plan has been submitted to the appropriate agency in accordance with Federal Clean Air Act, §112(r)(7) (Prevention of Accidental Releases);

(7) for applicants requesting a permit shield, any information requested by the executive director in order to determine whether to grant the shield;

(8) a certification in accordance with §122.165 of this title (relating to Certification by a Responsible Official);

(9) fugitive emissions from an emission unit shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether

the source category in question is included in the list of sources contained in the definition of "Major Source";

(10) for any application for which the executive director has not authorized initiation of public notice by June 3, 2001, any preconstruction authorizations that are applicable to emission units at the site;

(11) for emission units subject to compliance assurance monitoring, as specified in §122.604 of this title (relating to Compliance Assurance Monitoring Applicability), information specified in 40 Code of Federal Regulations (CFR) §64.3 (Monitoring Design Criteria); and 40 CFR §64.4 (Submittal Requirements), according to the schedule specified in 40 CFR §64.5 (Deadlines for Submittals); and

(12) for emission units subject to periodic monitoring, as specified in §122.602 of this title (relating to Periodic Monitoring Applicability), proposed periodic monitoring requirements 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, shall be submitted for the following permitting actions:

(A) permits issued under §122.201 of this title (relating to Initial Permit Issuance);



(B) permit renewals issued under §122.243 of this title (relating to Permit Renewal Procedures);

(C) permit reopenings issued under §122.231(a) and (b) of this title (relating to Permit Reopenings);

(D) significant permit revisions issued under §122.221 of this title (relating to Procedures for Significant Permit Revisions); and

(E) minor permit revisions issued under §122.217 of this title (relating to Procedures for Minor Permit Revisions).

(e) The executive director shall make a copy of the permit application accessible to the United States Environmental Protection Agency.

(f) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement; however, any facilities that meet the requirements of §116.119 of this title (relating to De Minimis Facilities or Sources) are not required to be included in applications unless the facilities or sources are subject to an applicable requirement.

## **SUBCHAPTER B: PERMIT REQUIREMENTS**

### **DIVISION 4: PERMIT CONTENT**

#### **§§122.142, 122.145, 122.148**

#### **Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit,

which authorizes the commission to administer and enforce federal operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The amendments are also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The adopted amendments implement TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

**§122.142. Permit Content Requirements.**

(a) The conditions of the permit shall provide for compliance with the requirements of this chapter.

(b) Each permit issued under this chapter shall contain the information required by this subsection.

(1) Unless otherwise specified in the permit, each permit shall include the terms and conditions in §§122.143 - 122.146 of this title (relating to General Terms and Conditions; Recordkeeping Terms and Conditions; Reporting Terms and Conditions; and Compliance Certification Terms and Conditions).

(2) Each permit shall also contain specific terms and conditions for each emission unit regarding the following:

(A) the generally identified applicable requirements and state-only requirements (e.g., New Source Performance Standards, Subpart Kb);

(B) the detailed applicability determinations, which include the following:

(i) the specific regulatory citations in each applicable requirement or state-only requirement identifying the emission limitations and standards; and

(ii) the monitoring, recordkeeping, reporting, and testing requirements associated with the emission limitations and standards identified under clause (i) of this subparagraph sufficient to ensure compliance with the permit.

(3) Each permit for which the executive director has not authorized initiation of public notice by June 3, 2001 shall contain any preconstruction authorization that is applicable to emission units at the site.

(c) Each permit shall contain periodic monitoring requirements that are 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) For emission units not in compliance with the applicable requirements at the time of initial permit issuance or renewal, the permit shall contain the following:

(1) a compliance schedule or a reference to a compliance schedule consistent with §122.132(d)(4)(C) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits); and

(2) a requirement to submit progress reports consistent with §122.132(d)(4)(C) of this title. The progress reports shall include the following information:

(A) the dates for achieving the activities, milestones, or compliance required in the compliance schedule;

(B) dates when the activities, milestones, or compliance required in the compliance schedule were achieved; and

(C) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(e) At the executive director's discretion, and upon request by the applicant, the permit may contain a permit shield for specific emission units.

(f) Where an applicable requirement is more stringent than a requirement under the acid rain program, both requirements shall be incorporated into the permit and shall be enforceable requirements of the permit.

(g) Permits shall contain compliance assurance monitoring in accordance with the schedule specified in 40 Code of Federal Regulations §64.5 (Deadlines for Submittals).

(h) Any compliance assurance monitoring requirements for an emission unit shall satisfy the requirements for periodic monitoring.

**§122.145. Reporting Terms and Conditions.**

Unless otherwise specified in the permit, the following reporting requirements shall become terms and conditions of the permit.

(1) Monitoring reports.

(A) Reports of monitoring data required to be submitted by an applicable requirement, or by the permit, shall be submitted to the executive director.

(B) Reports shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting.

(C) The monitoring reports shall be submitted no later than 30 days after the end of each reporting period.

(D) The reporting of monitoring data does not change the data collection requirements specified in an applicable requirement.

(2) Deviation reports.

(A) The permit holder shall report, in writing, to the executive director all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.

(B) A deviation report shall be submitted for at least each six-month period after permit issuance or at the frequency required by an applicable requirement which requires more frequent reporting. However, no report is required if no deviations occurred over the six-month reporting period.

(C) The deviation reports shall be submitted no later than 30 days after the end of each reporting period.

(D) Reporting in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements) does not substitute for reporting deviations under this paragraph.

**§122.148. Permit Shield.**



(a) At the discretion of the executive director, and upon request by the applicant, the permit may contain a permit shield for specific emission units. The permit shield is a special condition stating that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(b) In order for the executive director to determine that an emission unit qualifies for a permit shield, all information required by §122.132(d)(2), (3), and (7) of this title (relating to Application and Required Information for Initial Permit Issuance, Reopening, Renewal, or General Operating Permits) must be submitted with the permit application.

(c) The permit shall contain the following information for the emission units addressed by the permit shield:

(1) determinations by the executive director establishing one of the following:

(A) potentially applicable requirements or potentially applicable state-only requirements specifically identified during the application review process are not applicable to the source; or

(B) duplicative, redundant, and/or contradicting applicable requirements or state-only applicable requirements specifically identified during the

application review process are superseded by a more stringent or equivalent requirement;  
and

(2) a statement that compliance with the conditions of the permit shall be deemed compliance with the specified potentially applicable requirements or specified potentially applicable state-only requirements.

(d) Any permit that does not expressly state that a permit shield exists shall not provide a permit shield.

(e) Permit shield provisions shall not be modified by the executive director until notification is provided to the permit holder. No later than 90 days after notification of a change in a determination made by the executive director, the permit holder shall apply for the appropriate permit revision to reflect the new determination.

(f) Provisional terms and conditions are not eligible for a permit shield. Any permit term or condition, under a permit shield, shall not be protected by the permit shield if it is replaced by a provisional term or condition or the basis of the term or condition changes.

(g) Nothing in this section shall alter or affect the following:

(1) the provisions of Federal Clean Air Act (FCAA), §303 (Emergency Orders);

(2) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(3) the applicable requirements of the acid rain program; or

(4) the ability of the United States Environmental Protection Agency to obtain information from a source under FCAA, §114 (Inspections, Monitoring, and Entry).

**SUBCHAPTER E: ACID RAIN PERMITS AND CLEAN AIR INTERSTATE RULE**

**§§122.420, 122.422, 122.424, 122.426, 122.428**

**Statutory Authority**

The repeal of the sections is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal of the sections is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits to operate a federal source and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.054, concerning Federal Operating Permit, which requires sources to obtain a federal operating permit; THSC, §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal

operating permits; THSC, §382.0543, concerning Review and Renewal of Federal Operating Permit, which authorizes the commission to review and renew federal operating permits; and THSC, §382.05102, which relates to the permitting authority of the commission for greenhouse gas emissions. Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.142, which provides a time period for presumed notification by a state agency. The repeal of the sections is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7661 - 7661e, which requires states to develop and submit permit programs to the United States Environmental Protection Agency that implement the requirements of the Title V Permits Program.

The adopted repeal of the sections implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.011, 382.017, 382.051, 382.05102, 382.0515, 382.0518, 382.054, 382.0541, and 382.0543; Texas Government Code, §2001.006 and §2001.142; and FCAA, 42 USC, §§7661 - 7661e.

**§122.420. General Clean Air Interstate Rule Annual Trading Program Permit Requirements.**

**§122.422. Submission of Clean Air Interstate Rule Permit Applications.**

**§122.424. Information Requirements for Clean Air Interstate Rule Permit Applications.**

**§122.426. Clean Air Interstate Rule Permit Contents and Term.**

**§122.428. Clean Air Interstate Rule Permit Revisions.**