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PART 1	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 116	CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION
SUBCHAPTER B	NEW SOURCE REVIEW PERMITS
DIVISION 1	PERMIT APPLICATION
RULE §116.110	Applicability

(a) Permit to construct. Except as provided in §116.118 of this title (relating to Construction While Permit Amendment Application Pending), before any actual work is begun on the facility, any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state shall either:

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

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

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

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

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

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

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

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

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

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

(c) Compliance history. For all authorizations listed in subsections (a) and (b) of this section or §116.116 of this title (relating to Changes to Facilities), compliance history reviews may be required under Chapter 60 of this title (relating to Compliance History).

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

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

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

(3) §116.116(e) of this title.

(e) Change in ownership.

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

(A) the date of the ownership change;

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

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

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

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

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

(f) Submittal under seal of Texas licensed professional engineer. Applications for permit or permit amendment with an estimated capital cost of the project above $2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a Texas licensed professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas Board of Professional Engineers. The estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

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

Source Note: The provisions of this §116.110 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective September 4, 2000, 25 TexReg 8668; amended to be effective August 29, 2002, 27 TexReg 7910; amended to be effective August 6, 2020, 45 TexReg 5351

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SUBCHAPTER B	NEW SOURCE REVIEW PERMITS
DIVISION 1	PERMIT APPLICATION
RULE §116.111	General Application

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

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

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

(A) Protection of public health and welfare.

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

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

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Commission on Environmental Quality Sampling Procedures Manual."

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

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

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

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR Part 63)).

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

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

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

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

(ii) If the proposed facility or modification meets or exceeds the applicable greenhouse gases thresholds defined in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources) then it shall comply with all applicable requirements in this chapter concerning PSD review for sources of greenhouse gases.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification. In determining whether to issue, or in conducting a review of, a permit application for a shipbuilding or ship repair operation, the commission will not require and may not consider air dispersion modeling results predicting ambient

concentrations of non-criteria air contaminants over coastal waters of the state. The commission shall determine compliance with non-criteria ambient air contaminant standards and guidelines at land-based off-property locations.

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

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

(b) In order to be granted a permit, amendment, or special permit amendment, the applicant must comply with the requirements of Chapter 39 of this title (relating to Public Notice) and Chapter 55 of this title (relating to Request for Reconsideration and Contested Case Hearings; Public Comment).

(c) Upon request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title if there is no indication that the operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

Source Note: The provisions of this §116.111 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective September 23, 1999, 24 TexReg 8296; amended to be effective March 29, 2001, 26 TexReg 2398; amended to be effective September 12, 2002, 27 TexReg 8546; amended to be effective October 7, 2010, 35 TexReg 8944; amended to be effective April 17, 2014, 39 TexReg 2901; amended to be effective May 14, 2020, 45 TexReg 3093

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DIVISION 1	PERMIT APPLICATION
RULE §116.112	Distance Limitations

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

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

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

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

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

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

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

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

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

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

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

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

Source Note: The provisions of this §116.112 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective January 8, 2003, 28 TexReg 240; amended to be effective February 4, 2004, 29 TexReg 1010; amended to be effective May 14, 2020, 45 TexReg 3093

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SUBCHAPTER B	NEW SOURCE REVIEW PERMITS
DIVISION 1	PERMIT APPLICATION
RULE §116.114	Application Review Schedule

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

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

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

(i) the additional information required; and

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

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

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

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

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

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

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

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

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

(4) Refund of permit fee.

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

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

(b) Voiding of deficient application.

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

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

(c) Notification of executive director's decision.

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

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

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

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

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

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

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

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

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

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

Source Note: The provisions of this §116.114 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective September 23, 1999, 24 TexReg 8296; amended to be effective September 14, 2003, 28 TexReg 7763; amended to be effective January 10, 2008, 33 TexReg 190; amended to be effective June 24, 2010, 35 TexReg 5331; amended to be effective November 22, 2018, 43 TexReg 7540

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RULE §116.115	General and Special Conditions

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

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

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

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

(A) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(B) Start-up notification.

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

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

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

(C) Sampling requirements.

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

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

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

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

(E) Recordkeeping. The permit holder shall:

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

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

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

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

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

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

(F) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates." Emissions that exceed the maximum allowable emission rates are not authorized and are a violation of the permit.

(G) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for emissions events and maintenance in accordance with §§101.201, 101.211, and 101.221 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements; and Operational Requirements).

(H) Compliance with rules.

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

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

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

(c) Special conditions. The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of Title 30 of the Texas Administrative Code.

(2) Special condition for written approval.

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

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

(ii) an exemption under Chapter 106 of this title (relating to Permits by Rule).

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

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

(ii) cause the facility to become subject to review under:

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

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

Source Note: The provisions of this §116.115 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective March 29, 2001, 26 TexReg 2398; amended to be effective December 11, 2002, 27 TexReg 11574; amended to be effective September 14, 2003, 28 TexReg 7763; amended to be effective March 3, 2011, 36 TexReg 1305

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RULE §116.116	Changes to Facilities

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

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

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

(b) Permit amendments.

(1) Except as provided in subsection (e) of this section or §116.118 of this title (relating to Construction While Permit Amendment Application Pending), the permit holder shall not vary from any representation or permit condition without obtaining a permit amendment if the change will cause:

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

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

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

(2) Any person who requests permit amendments must receive prior approval by the executive director or the commission, except as provided in §116.118 of this title. Applications must be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

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

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

(c) Permit alteration.

(1) A permit alteration is:

(A) a decrease in allowable emissions; or

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

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

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

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

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

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

(B) involve a change in permit conditions; or

(C) affect facility or control equipment performance.

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

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

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

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

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

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

(e) Changes to qualified facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) construction of a new facility; or

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

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

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

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

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

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

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

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

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

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

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

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

Source Note: The provisions of this §116.116 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective September 23, 1999, 24 TexReg 8296; amended to be effective September 4, 2000, 25 TexReg 8668; amended to be effective October 7, 2010, 35 TexReg 8944; amended to be effective August 6, 2020, 45 TexReg 5351

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SUBCHAPTER B	NEW SOURCE REVIEW PERMITS
DIVISION 1	PERMIT APPLICATION
RULE §116.117	Documentation and Notification of Changes to Qualified Facilities

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

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

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

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

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

(A) §116.150 and §116.151 of this title (relating to Nonattainment Review) and §§116.160 - 116.163 of this title (relating to Prevention of Significant Deterioration Review); or

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

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

Source Note: The provisions of this §116.117 adopted to be effective July 8, 1998, 23 TexReg 6973; amended to be effective October 7, 2010, 35 TexReg 8944

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SUBCHAPTER B	NEW SOURCE REVIEW PERMITS
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RULE §116.118	Construction While Permit Amendment Application Pending

(a) Purpose, applicability, and exclusions.

(1) To the extent permissible under federal law and the requirements of this section, an applicant for a permit amendment may, at their own risk, begin construction related to the application if the executive director has completed the technical review and issued a draft permit including the permit amendment.

(2) An applicant may not begin construction under this section if the facility that is the subject of the permit amendment is a concrete batch plant located within 880 yards of a property that is used as a residence. This limitation on construction does not affect or supersede the designation of an affected person under Texas Health and Safety Code (THSC), §382.056 or §382.058.

(3) Any new facility or group of facilities, or changes to an existing facility or group of facilities, that constitutes a new major stationary source or a major modification, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions) is not eligible for construction under this section.

(4) This section does not apply to the amendment of a Plant-wide Applicability Limit issued under Subchapter C of this chapter (relating to Plant-wide Applicability Limits).

(5) Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter E of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are not eligible for construction under this section.

(6) This section does not apply to qualified facility changes authorized under §116.116(e) of this title (relating to Changes to Facilities).

(7) This section does not apply to requests, claims, registrations, or applications for a standard permit under Subchapter F of this chapter (relating to Standard Permits) or a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

(8) This section does not relieve the applicant or project from any other applicable requirements. An applicant seeking to begin construction under this section shall comply with all other applicable state and federal requirements pertaining to an application for a permit amendment (such as, but not limited to, requirements concerning public notice and participation, federal applicability, emission control technology, applicable distance limitations, etc.).

(b) Public notice. An applicant seeking to begin construction under this section shall comply with the provisions in Chapter 39 of this title (relating to Public Notice).

(c) Prohibitions on facility operation and commission action.

(1) Any facility constructed or modified under this section shall not be operated until the commission has issued the final permit amendment authorizing the construction or modification.

(2) The commission may not consider construction begun under this section in determining whether to grant the permit amendment sought in the application.

Source Note: The provisions of this §116.118 adopted to be effective August 6, 2020, 45 TexReg 5351

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RULE §116.119	De Minimis Facilities or Sources

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

(1) categories of facilities or sources included on the list entitled "De Minimis Facilities or Sources;"

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

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

(B) coatings (excluding plating materials), 100 gallons per year;

(C) dyes, 1,000 pounds per year;

(D) bleaches, 1,000 gallons per year;

(E) fragrances (excluding odorants), 250 gallons per year;

(F) water-based surfactants/detergents, 2,500 gallons per year;

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

Attached Graphic

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

(A) proximity to receptors;

(B) rate of emission of air contaminants;

(C) engineering judgment and experience; and

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

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

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

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

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

(A) typical operating scenarios;

(B) typical design and location;

(C) the types and rates of air contaminants emitted;

(D) engineering judgment and experience; and

(E) toxicological or health impacts.

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

Source Note: The provisions of this §116.119 adopted to be effective September 4, 2000, 25 TexReg 8668

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RULE §116.120	Voiding of Permits

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

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

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

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

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

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

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

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

Source Note: The provisions of this §116.120 adopted to be effective September 14, 2003, 28 TexReg 7763

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RULE §116.127	Actual to Projected Actual and Emissions Exclusion Test for Emissions

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

(1) a description of the project;

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

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

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

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

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

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

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

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

(2) the calculated actual annual emissions.

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

Source Note: The provisions of this §116.127 adopted to be effective March 3, 2011, 36 TexReg 1305

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