HOWARD L. GILBERG

Shareholder, Guida, Slavich & Flores, P.C.
750 North St. Paul St., Suite 200, Dallas, Texas 75201
214.692.0009, Fax 214.692.6610, e-mail: gilberg@gsfpc.com

REPRESENTATIVE AIR MATTERS

Title V and state air permitting of new and major modifications and expansions at over 125 manufacturing facilities across the United States.

Counsel to trade associations concerning federal MACT standards development and Texas air quality issues.

Environmental audit counsel concerning over 500 air permitted sites in Texas.

REPRESENTATIVE CLIENT INDUSTRIES

Oil and Natural Gas Upstream and Midstream
Petroleum Refining
Petrochemicals
Fuel-Grade Ethanol
Power Production: LFG and Wind
Real Estate and Banking
Distressed Land Acquisition
Hotel and Hospitality
High Tech and Computers
Wood Products
Pulp and Paper
Printing
Coatings
Medical Waste Management
Hazardous Waste Fuel Management
Ceramic Tile
Brick
Portland Cement
Non-Coal Mining
Asphaltic Roofing Materials
Aluminum and Vinyl Windows
Commercial Construction
Secondary Lead Smelting
Battery Manufacturing
Steel and Steel Wire Products
Copper Rod and Wire
Aluminum Extrusion
Electroplating
Agricultural Processing
Farm Feed, Seed and Herbicide
Confined Animal Feedlot
Cosmetics

PROFESSIONAL BACKGROUND AND ENVIRONMENTAL LAW ACCOMPLISHMENTS

State Bar of Texas, Natural Resources and Environmental Law Section, Chair (1999-2000);

Dallas Bar Association, Environmental Law Section, Chair (1991);

North Texas Clean Air Steering Committee, Board Member (2003-2007), (2010-);

North Texas Clean Air Coalition, Chair (2003), Dallas County Chair (1998-2004), (2007-);

DFW Ozone Non-Attainment Area Emissions Reduction Credit Organization, Chair and Founder (1997-1998), Board Member (1998-);

Air Quality Advisory Committee, North Central Texas Council of Governments, Board Member (1995-1997);

Mr. Gilberg is a frequent speaker on air quality topics, having delivered over 40 presentations in recent years.

EDUCATION

Juris Doctor Degree, *cum laude*, Indiana University School of Law, May 1981;

Bachelor of Arts Degree in Honors Economics, with honors, University of Virginia, May 1977.

AIR QUALITY ISSUES
"LITTLE PATCH OF HEAVEN"

HOWARD L. GILBERG
Guida, Slavich & Flores, P.C.
gilberg@gsfpc.com

State Bar of Texas
22ND ANNUAL TEXAS
ENVIRONMENTAL SUPERCONFERENCE
August 4-6, 2010
Austin, Texas

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AIR QUALITY ISSUES
"LITTLE PATCH OF HEAVEN"

By Howard L. Gilberg

I. Introduction

The law, regulation and particularly the policies related to air quality and air emissions in Texas are in transition, if not turmoil. The consistent legal trend seems to be toward more stringent legal requirements, but this is too simplistic a view. Requirements are coming at the regulated community with such speed and from so many different directions that few in the regulated community or in the regulating community have their arms around all of them. There are conflicting or at least incongruent messages.

The purpose of this presentation is to provide an overview of the major factors and events influencing the current State of Texas' air quality law and regulation. As its backdrop, the author focuses on the air quality law and regulation affecting the upstream and midstream oil and natural gas industry in Texas, and specifically the Barnett Shale operations of North Texas. This paper concludes with the identification of legal issues that will provide the basis for oral presentation on August 4.

II. Challenges Deep in the Heart of Texas Air Law

The stars aren't bright deep in the heart of today's Texas Air Law. In fact, there is no shortage of air quality-related legal, technical, business and practical uncertainties and challenges facing Texas and Texans.[1]

The following seven are the most pressing, in this author's judgment, but they are certainly not the only significant challenges. They are not identified on the basis of importance or priority because (a) there are widespread differences in prioritization among stakeholders, and (2) Texans have enough contention in this area today, without this author adding one more log to those fires.

A. Challenge 1: To Greenhouse Gas Report or Not; *State of Texas v. EPA*

Emitters of 25,000 or more annual tons of carbon dioxide and its legal equivalents have been and are gathering data to comply with Greenhouse Gas ("GHG") reporting requirements for the first time on March 31, 2011, as required by 40 C.F.R. 86, 87 and 89 et al.[2]

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[1] The *Austin American Statesman* described the situation in an editorial appearing on November 15, 2009 as "Battle Lines Forming between EPA, state environmental agency".

[2] 74 Fed.Reg. 56260 (October 30, 2009). Stationary fuel combustion engines in the Industry, as defined below, are subject to Subpart C of this regulation if the aggregate maximum rated heat input capacity of all stationary fuel combustion units at a facility is 30 mmbtu/hr or greater. The author wishes to acknowledge the input of Gretchen C. Kern on this issue.

At the same time, the very legal underpinnings for GHG reporting and GHG-related legal activities at EPA are under legal attack by the State of Texas. The Attorney General has filed suit[3] challenging EPA's December 7, 2009 GHG Endangerment Finding,[4] from which EPA's GHG regulations draw their legal authority. While the litigation has not stayed the applicability of GHG regulations, and while there is more than ample national and state-wide legal and political debate on the substantive merits of this action, the fact remains that if the State of Texas were to be successful in its legal challenge, actions to develop and gather GHG data will be for legal naught. The same is true for state permitting of GHG emissions, which is presently scheduled to be phased in starting with the largest emitters in 2011.[5]

B. Challenge 2: Not Attaining the Federal Ozone Attainment Standard

Texas Ozone Non-Attainment Areas are about to fail to demonstrate attainment with federal Ozone National Ambient Air Quality Standard[6] (herein "Ozone Attainment Standard") yet again. Emissions of ozone precursors from on-road vehicles, which continue to tend to dominate the emission inventory of each non-attainment area, skew the options for achieving the Ozone Attainment Standard. Emissions from on-road and off-road vehicles are the exclusive legal purview of the federal government.

Further plans to regulate stationary source air emissions to achieve the Ozone Attainment Standard are on the way, followed by site-by-site permitting changes. By themselves, those regulations will not resolve ozone attainment issues until the emissions from on-road and off-road vehicles are reduced.

C. Challenge 3: New, More Stringent Federal Ozone Attainment Standard

EPA is set to issue final regulations later in 2010 that will lower (increase the stringency of) the Ozone Attainment Standard and make its achievement even more difficult. These changes will be made on the basis of recommendations focused on public health. There will be considerable controversy over the Ozone Attainment Standard set, and litigation seems highly probable.

Key issues are plentiful but in this author's judgment, the focus ought to be on three: (1) the numeric Ozone Attainment Standard itself, (2) the scientific bases for that numeric standard, and (3) the length of time that states, their non-attainment areas and their emission sources are given to achieve that standard.

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[3] *State of Texas v. E.P.A.*, No. 10-1041 consol. with 09-1322 (D.C. Cir. Feb. 16, 2010). The Petition for Review filed pursuant to Section 307 of the Clean Air Act, 42 U.S.C. 7607(b)(1) is provided in Appendix A.

[4] This finding was developed initially in response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007). See EPA Endangerment Finding, 74 Fed. Reg. 66496 (December 15, 2009) (legally effective January 14, 2010).

[5] EPA's so-called Tailoring Rule bears on this subject but in the author's judgment is not at the heart of this Challenge but derivative of it.

[6] 40 C.F.R. 50 (2010)

Some have and will argue that the Ozone Attainment Standard that EPA may select will, practically speaking, be beyond reach. The DFW Non-attainment Area could be a case in point. EPA is considering an Ozone Attainment Standard between 60 and 70 $uglm^3$. TCEQ ozone monitors located outside the DFW Non-attainment Area measure as much as 55 $uglm^3$ of ozone during hot, still summer days. Ozone measured at these out-of-area monitors is proven to be formed tens or hundreds of miles from the DFW Non-attainment Area and transported by prevailing winds to the region. Sources within the DFW Non-attainment Area have no practical influence on these measurements.

While the DFW Non-attainment Area will be deemed later this year to have failed to have met the current 84.9 $uglm^3$ one hour ozone standard, a new Ozone Attainment Standard set at the low end of the range under consideration by EPA will magnify the difficulty of the attainment challenge, possibly beyond near-term reach. One can fairly conclude that such standard will be legally very difficult to address through the state's most stringent non-attainment new source review program because that program's requirements apply only to sources located within the non-attainment area. These sources are not the primary or, from a percentage standpoint, a material source of the ozone non-attainment at issue. Sources located outside the state and sources within the exclusive authority of EPA are material and beyond the state's legal authority.

The time allotted to meet the new, lower ozone standard will be decisive and difficult. Some have argued that the length of time EPA should provide to allow ozone non-attainment areas around the country to achieve the new Ozone Attainment Standard should provide a technological cushion that will allow what is practically beyond reach today to become realistic in the future. Others will assert that the time allotted to achieve compliance with the new Ozone Attainment Standard must be as short as possible under ideal circumstances because emissions reductions that lead to improvements to public health can not wait. Each of these positions has merit; it remains to be seen what balance EPA will strike in this rulemaking.

The foregoing creates a tremendous challenge for Texas, its current non-attainment areas, and the regulated community located within them. Some wonder privately whether more stringent permitting requirements really will contribute in more than very small increments to achieving the new Ozone Attainment Standard or improvements in public health when the Non-attainment Area emissions inventory is dominated by on-road and off-road vehicles. Even those in the private sector that remain abreast of these details are having difficulty incorporating them into cohesive and necessarily ever more careful long term strategic planning.

The foregoing creates corresponding economic development challenges for cities, chambers of commerce and the workforce in those communities that add to the independent challenges of today's tough economic times.

D. Challenge 4: Welcome to Ozone Non-Attainment

The impending drop in the national Ozone Attainment Standard will result in the designation of several areas in Texas as new Ozone Non-Attainment Areas. The metropolitan areas that would join the twenty current nonattainment counties in and around Dallas-Fort Worth, Houston-Galveston and Beaumont-Port Arthur are San Antonio, Austin, El Paso and Longview-Tyler. Selected counties near Corpus Christi and Victoria, and in Northeast Texas, may also find themselves designated non-attainment for ozone, depending on the final Ozone Attainment Standard set by EPA.

If the challenges presented to existing Texas Ozone Non-Attainment Areas will be large, the challenges for these new Ozone Non-Attainment Areas will be enormous: too numerous to list. Some in these areas have begun to examine the changes coming, but have a lot of the learning curve to climb very quickly. There is little debate that these areas will face the same formidable Attainment challenges heretofore "reserved" for the state's largest metropolitan areas. In addition, non-attainment new source review permitting for sources in these areas will consume presently unidentified TCEQ permitting resources.

E. Challenge 5: *State of Texas v. EPA* Parts II and III

EPA and TCEQ have reverted to a level of acrimony not seen by this author for many years. Senator Inhofe has become involved in questioning EPA Region 6, see Appendix B. TCEQ has made several efforts to respond to federal questions, concerns and other contested situations. TCEQ has made formal changes to state air quality regulations. It has made changes, both large and small, in its informal processing of air permits.

Just as Texas' Petition for Review challenging EPA's Endangerment Finding made the headlines last February, see Appendix A, EPA made the headlines in May and June by taking over the air permitting of selected facilities in Texas, pursuant to retained legal authority under the federal Clean Air Act and its delegation of authority to the state. In addition, EPA formally disapproved that portion of the TCEQ air permitting regulations that govern Changes to Qualified Facilities, 30 TAC 116.116(e). Undeterred, the Attorney General's office filed suit on TCEQ's behalf against EPA on June 14, 2010 challenging that federal action.[7] A copy of that Petition is provided in Appendix A.

On June 30, EPA formally disapproved Texas' 16-year old Flexible Permitting Program, setting the stage for "State of Texas v. EPA III". EPA's action places close to 40 flexible permit holders in Texas in legal harm's way, both from a permitting, and possibly legal enforcement, perspective.

This legal area has been addressed with legally binding regulation and a prolific number of informal TCEQ Guidance documents which have in effect become the de

[7] *State of Texas v. E.P.A.*, No. 10-60459 (5th Cir. June 14, 2010).

facto law of air permitting in Texas. It is too simplistic to assert as some have that the academic interests and perspectives of EPA Region 6's new Regional Administrator, Dr. Armendariz, or the Obama Administration, or both, are the sole source of this acrimony. However, when those items are added to the overall equation, there can be little debate why Air Law issues in Texas is in transition and turmoil. The present ill will and hostility have created a level of legal uncertainty in Texas Air Law that is helpful for no serious stakeholder, including the citizens of Texas, especially in these difficult economic times.

F. Challenge 6: Science, Public Perception and Public Health

TCEQ has ample data that demonstrate that air quality in each Texas Ozone Non-attainment Area has improved measurably over the years. For example, TCEQ Chief Engineer Susana Hildebrand reported accurately in an April 15, 2010 presentation in Austin that even as the populations of Texas Ozone Non-Attainment Areas have grown and even as the population of Texas as a whole with an increasing number of vehicles has grown, emissions of nitrous oxides, the leading air pollutant precursor to ozone formation, have fallen.

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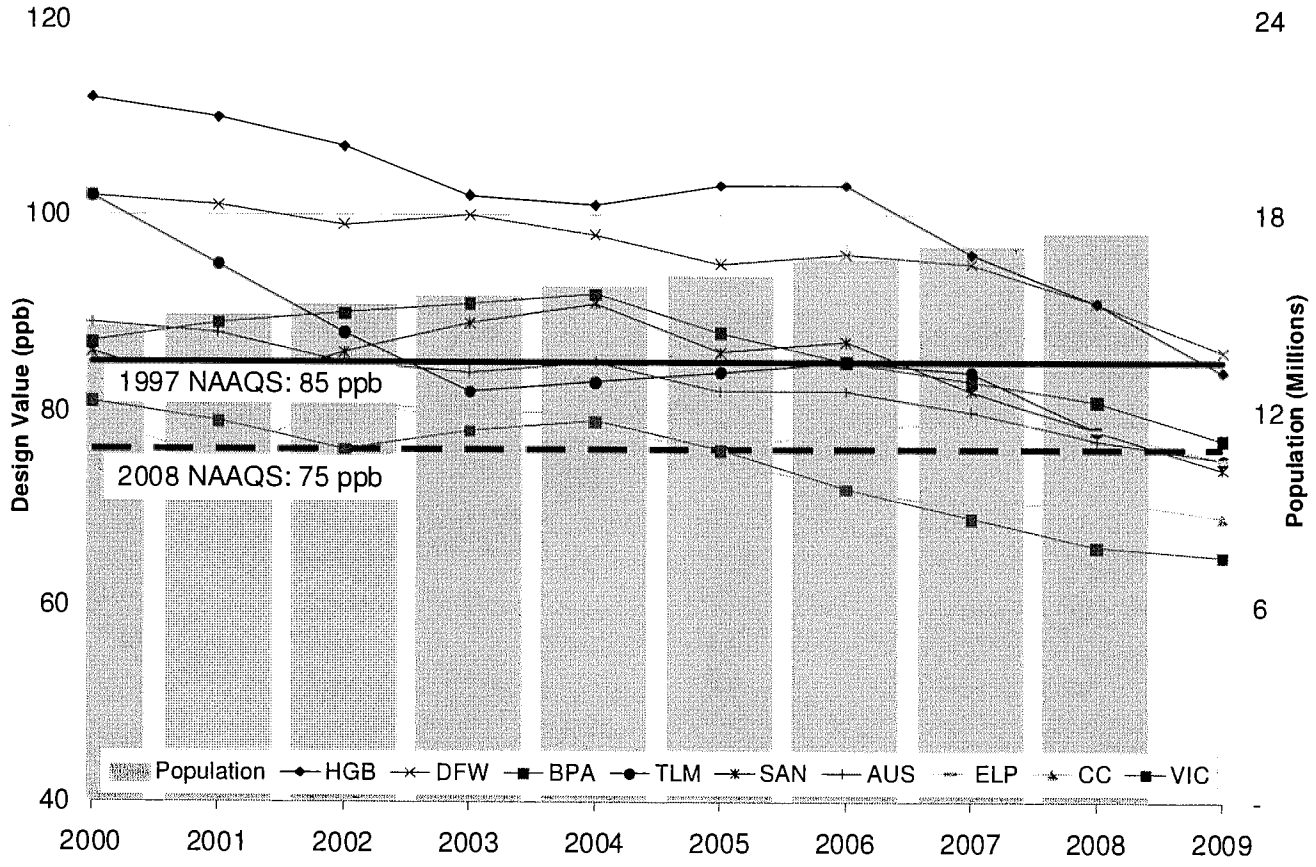
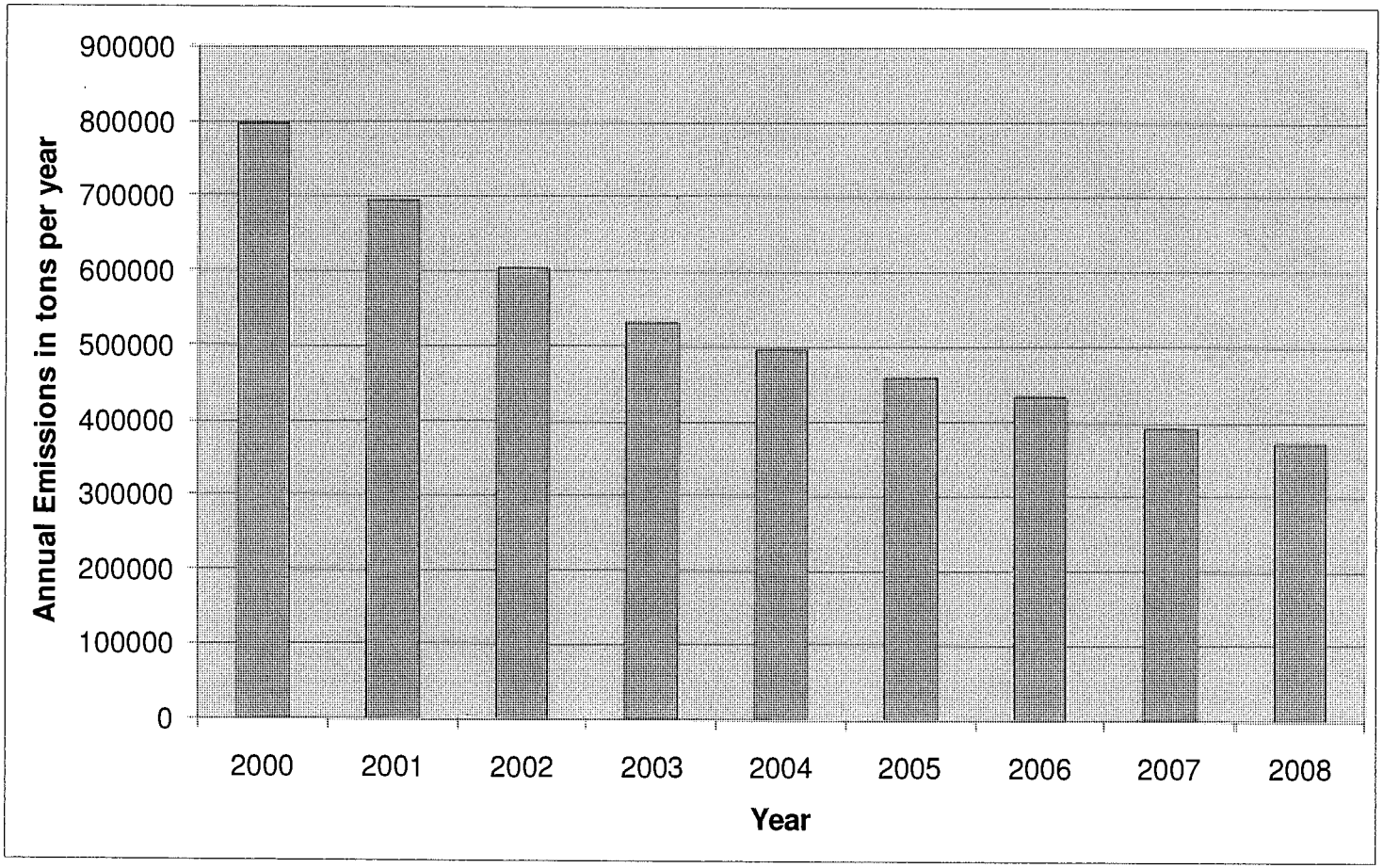
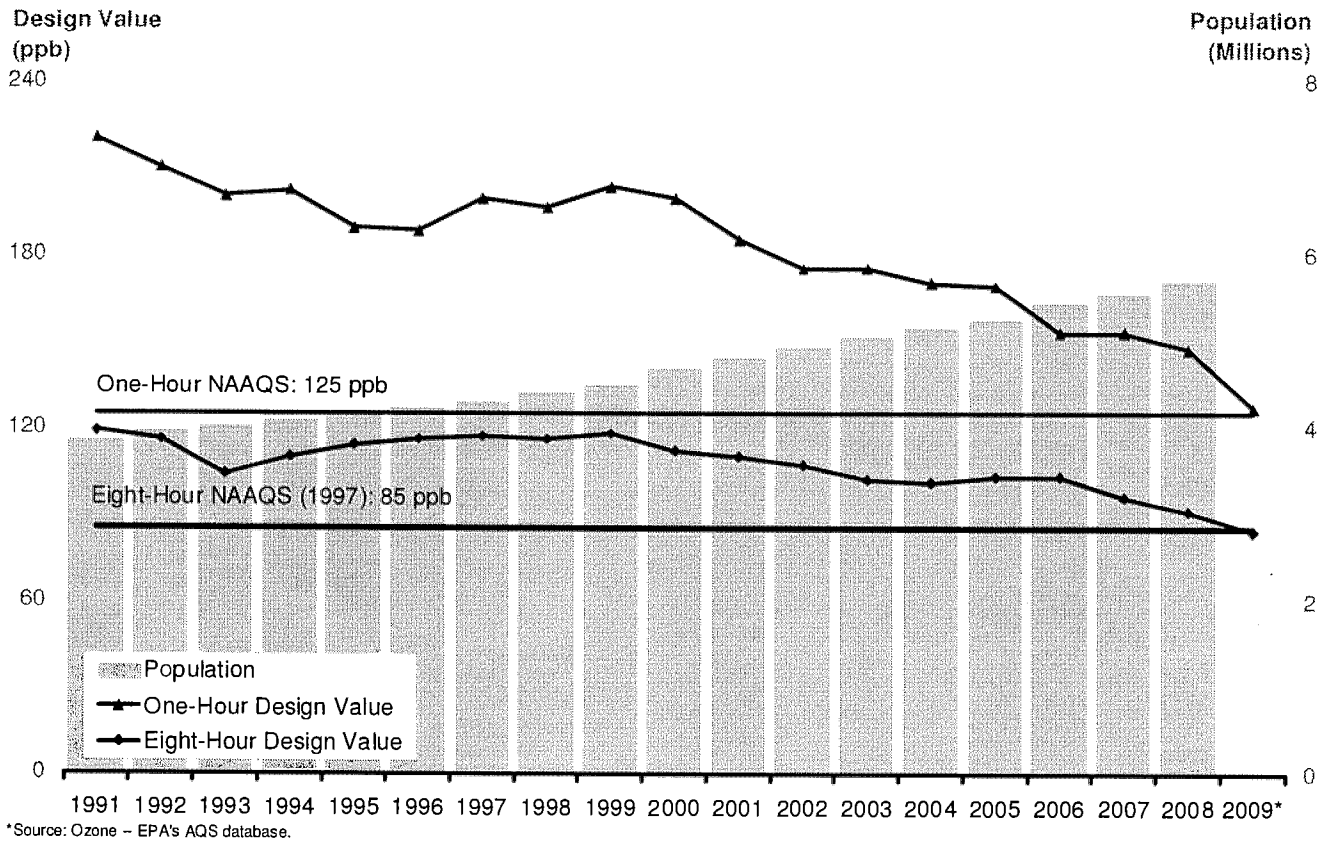
Texas Eight-Hour Ozone Design Value and Population Trends 2000-2009



Texas Statewide NO_x Trend

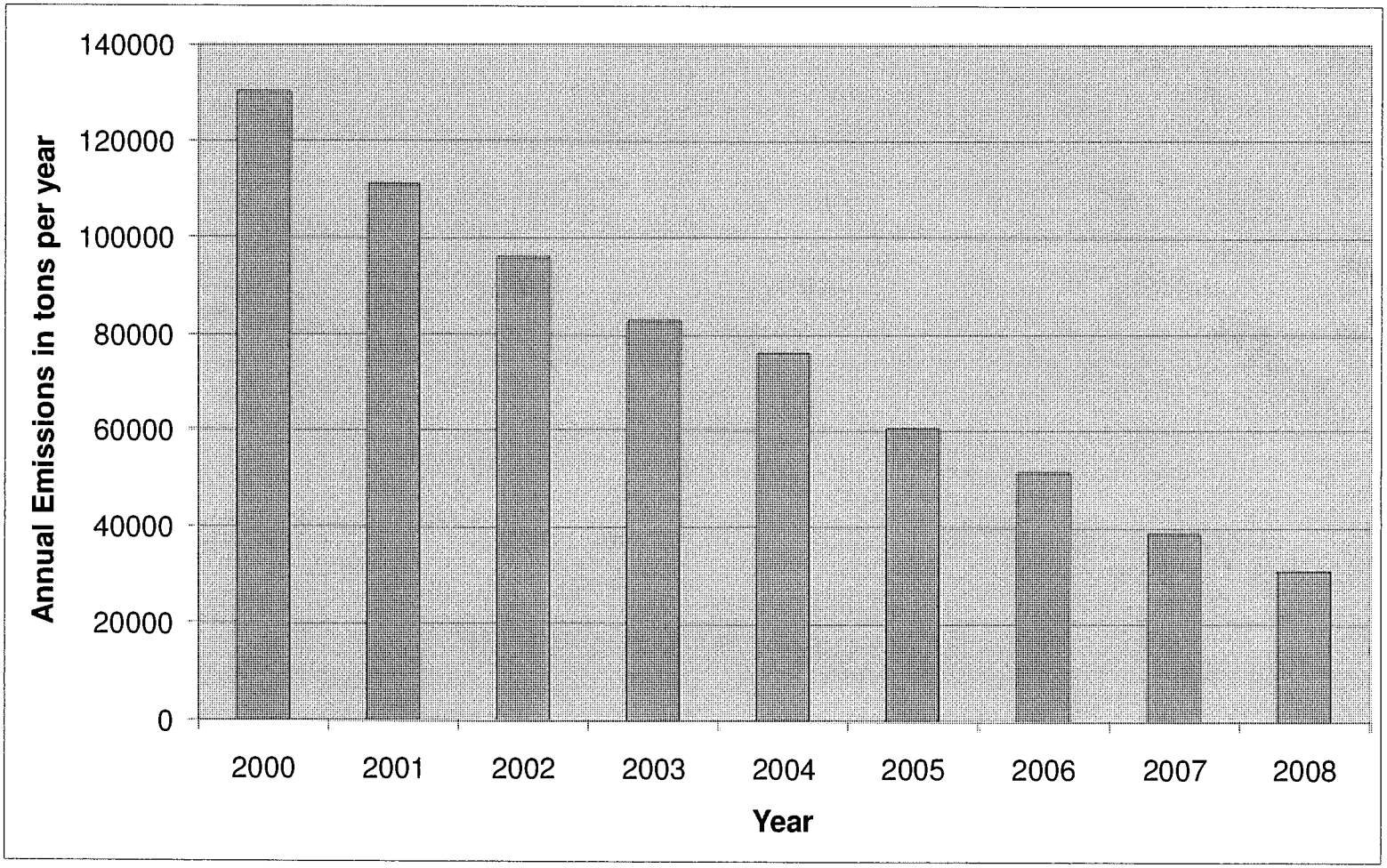


HGB Ozone Design Value and Population Trends 2000-2009

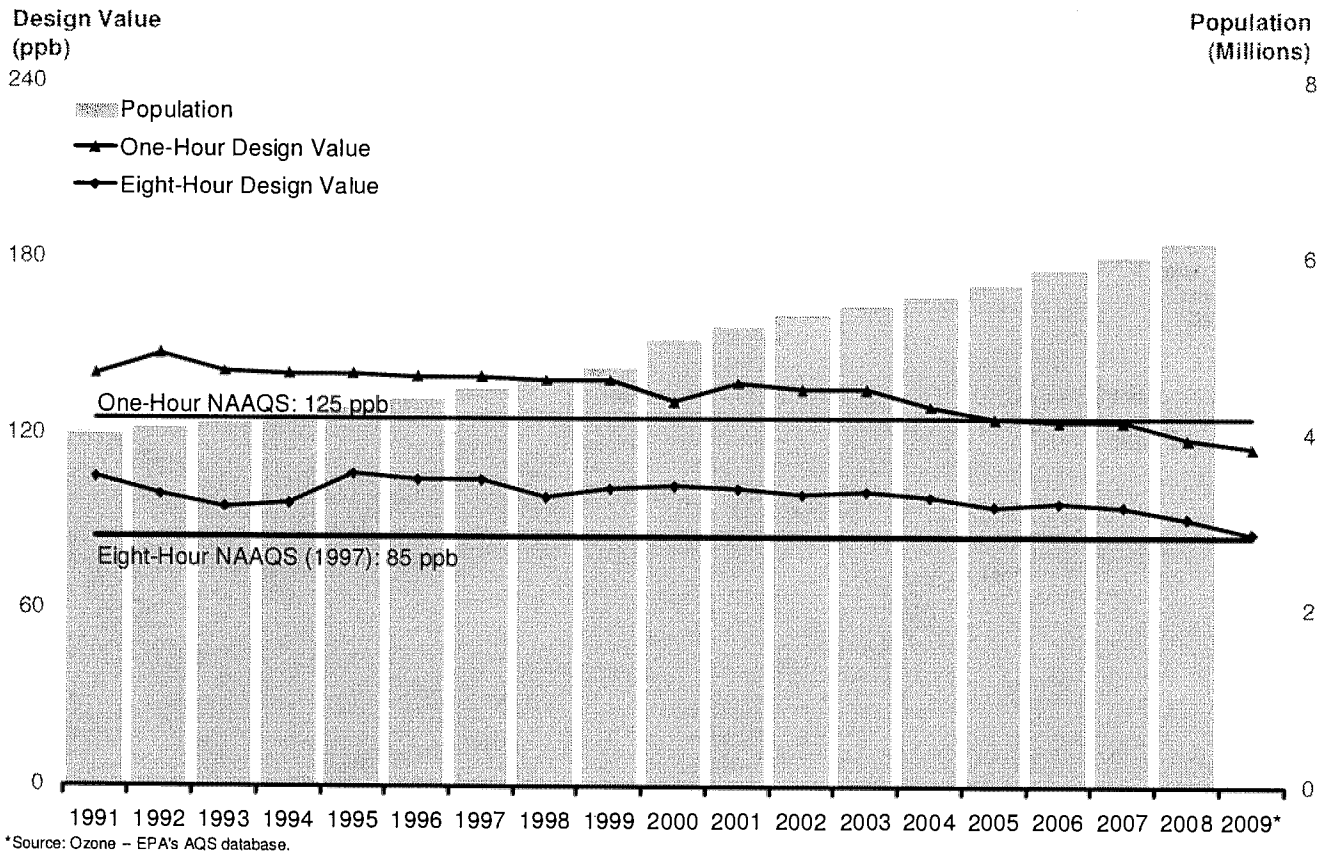


*Source: Ozone – EPA's AQS database.
1991-2008 Population --http://www.census.gov/popest/archives/1990s/MA-99-03b.txt and http://www.census.gov/popest/counties/CO-EST2008-popchg2000_2008.html
2009 Data is current as of October 6, 2009 and is subject to change. 2009 population data will not be available until June 2010.

Houston-Galveston-Brazoria (Eight-County) Area NO_x Trend



Ozone Design Values and Estimated Population in the DFW Area



*Source: Ozone – EPA's AQS database.
1991-2008 Population --http://www.census.gov/popest/archives/1990s/MA-99-03b.txt and http://www.census.gov/popest/counties/CO-EST2008-popchg2000_2008.html
2009 Data is current as of October 6, 2009 and is subject to change. 2009 population data will not be available until June 2010.

The Barnett Shale Energy Education Council, an industry-sponsored association, has documented that as Barnett Shale operations grew through the first decade of the 2000's, monitored ozone levels in the DFW area fell. Measures taken by EPA, TCEQ, Texas businesses and Texans have worked and are working.

What has changed is the federal definition of what constitutes "clean air": the Ozone Attainment Standard has twice become more stringent in the last decade and it is about to change again, as described in Challenge 3, above. The DFW Non-attainment Area met the 1997 ozone standard in time for the 2007 deadline, but by 2007, the standard had been lowered. The conclusion in some quarters is phrased as "Texas hasn't met its federal clean air obligations." Legally, as far as that goes, this is correct; it does however, fail to go far enough.

In addition, there is an increasing body of data that purports to correlate high levels of ozone with respiratory problems in the more respiratorily-challenged Texans: the young and elderly. These correlations have received general approval from the medical community.

Public perception has developed around the belief that there is something incongruous between actual scientific data measuring air quality and public health information, and that the incongruity should be resolved in all cases in all ways available in favor of the latter. Irrespective of the merits of this balance, it is a very difficult challenge to legislate, regulate or permit air quality issues based on public perception and not on the scientific underpinnings of Texas Air Law or the economy faced by Texas businesses.

G. Challenge 7: Political Scrutiny: Sunset Review

Each of the foregoing Challenges and other air quality-related matters will come together, either directly or indirectly, in the legislature's 2011 Sunset Review of the TCEQ. Preparations for Sunset Review within the TCEQ began several months ago, and are well underway in other quarters. Sunset Review was purposefully scheduled by the 2009 legislature two years ahead of the statutory schedule. The agency's implementation of the state's air laws and regulations, among many things, will come under a pressure-filled level of political scrutiny, all at a time when the agency is dealing with steep budget constraints.

Air quality has risen like cream to the top of many local and state political agendas, making the TCEQ's position in the Sunset Review process a tremendous challenge. The 2009 legislative session saw over 30 bills related to the Barnett Shale operating area of North Texas. Local regulation of air toxics has been an ongoing interest in some quarters in Houston.

The media and some vocal local citizenry, from Houston and Clear Lake, to DISH, Fort Worth, and Flower Mound, have politically elevated air quality and its relation to public health in their own ways and to differing degrees. The science

developed by TCEQ Toxicology group will temper some but not all (and possibly not very much) of what will be a very interesting, costly and highly politicized drama.

III. Case in Point: Upstream and Midstream oil and natural gas industry (the "Industry")

A. Legal Jurisdiction

Although the Industry has historically considered itself regulated primarily or exclusively by the Texas Railroad Commission, the legal jurisdiction of the TCEQ over air quality matters in this Industry has been fairly clear since clear since the execution of the first inter-agency Memorandum of Understanding between the Railroad Commission and predecessors to the TCEQ in 1987.[8]

B. Permitting

TCEQ and its predecessor state agencies have regulated air emissions from upstream sites and mid-stream sites through one or more of three means of authorization: permits by rule (formerly known as standard exemptions), case-by-case new source review ("NSR") permits, and more recently by Standard Permit, all of which are described in 30 TAC 116. A relatively small number of these sites also are required to obtain a Title V Operating Permit pursuant to federal delegation of the EPA's 40 CFR Part 70 authority to the state.[9]

Permits by rule have been the primary air permitting mechanism for the Industry. The vast majority of these sites are relatively small from an air emissions standpoint and generally have, until the explosive growth of the Barnett Shale Play in North Texas, been predominantly located in lightly inhabited areas of the state. The permits by rule of main relevance to the Industry are:

- 30 TAC 106.352: Oil and Gas Production Facilities
- 30 TAC106.512: Stationary Engines and Turbines
- 30 TAC 106.478: Storage Tank and Change of Service
- 30 TAC 106.261 and .262: Facilities (Emissions Limitations); Facilities (Emission and Distance Limitations)

The current version of each of these permits by rule is provided in Appendix D. In addition, each site seeking to qualify for a permit by rule is required to meet the general and specific requirements found in 30 TAC 106.4.

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[8] Since 1998, this MOU has been legally enforceable as a state regulation, see 16 TAC 3.30 and 30 TAC 7.117. As a result of statutory additions and changes in the 2009 legislature the MOU is in the process of being revised. *see* Internal TCEQ Memorandum from Richard Hyde, Deputy Director, to TCEQ Commissioners, (March 11, 2010), provided in Appendix C.

[9] 30 TAC 122

On April 21, TCEQ staff conducted a stakeholder meeting to take comment on an informal proposal to repeal 30 TAC 106.352: Oil and Gas Production Facilities and the Standard Permit for this Industry, 30 TAC 116.620, and replace them with new, expansive, onerous permit by rule and standard permit requirements. Appendix E provides a copy of the current Standard Permit and a copy of each of the informally proposed replacements. The reasons for these proposals went unspoken at the time; however, one can see informal, emerging federal policy (e.g. examination of the aggregate impact on public health arising from multiple natural gas air emissions sources within a defined geographical area or operations basin) and public and media concerns raised in Texas concerning Barnett Shale operations that remain scientifically disputed by TCEQ and the Industry, among many things. Also clear is an increased level of public involvement in the permitting process, a stated goal of environmental and public activists.

The regulated community raised general and specific questions, and some very serious questions and reservations about this informal proposal. Some noted that TCEQ staff failed to distinguish between regulation that might or might not be appropriate in densely populated operating areas of Texas, like the Barnett Shale in North Texas, from regulation that might or might not be necessary in lightly populated areas of the state where human exposure is more remote. From an Industry structural standpoint, the effect of the proposals under consideration by staff, if adopted, would be to substantially increase the time (not to mention cost) necessary to apply for and obtain a permit, and that such timing would be at odds with standard Mineral Lease start-of-operations timing requirements. The cost to TCEQ to administer this proposed approach would be enormous, given the thousands of sites in Texas to which it would eventually apply.

On July 9, TCEQ staff announced to the Commissioners its intention to present a proposal to terminate of the permit by rule and standard permit for this Industry and the intention to present a proposed replacement for each at the Commissioners' July 28 agenda. This announcement is provided in Appendix F. Details of that proposal were not publicly available as of the deadline for submission of this written presentation.

C. Other Important Texas Permitting Considerations

1. Hazardous Air Pollutant Emission Standards

Simple Texas oil and natural gas upstream and midstream operations are generally subject to the following standards regulating the emission of hazardous air pollutants ("HAP"), including benzene, formaldehyde, or other organic pollutants listed in 40 CFR Part 63. HAP standards are applicable in Texas by operation of federal law and through reference and incorporation through 30 TAC 101.20. A site's air permit may make reference and thereby incorporate HAP standards in that manner as well.

- Dehydrator Emissions: 40 CFR Part 63, Subpart HH

- Engines Emissions: 40 CFR Part 63, Subpart ZZZZ ("RICE" MACT) (in coordination with New Source Performance Standards, 40 CFR Part 60, Subpart JJJJ).

2. Non-attainment Stationary Engine NOx Limitations

Stationary, reciprocating internal combustion engines operating at a non-major sources of NOx in the DFW and Houston-Galveston Ozone Non-attainment Area are subject to applicable portions of 30 TAC 117.[10] These requirements were adopted in the effort to achieve attainment of the current national Ozone Attainment Standard, which as described above, is about to become more stringent. In some circumstances, a sometime-overlooked stack testing requirement will be applicable.

3. Mass Emissions Cap and Trade

The Houston-Galveston area has had its unique Mass Emissions Cap and Trade program that most of the Industry's engine population has had to meet since 2001 as part of its permitting responsibilities.

IV. Air Quality Issues"Little Patch of Heaven"

In his August 4 remarks, the author will focus on the following topics:

1. TCEQ Inspection Trends and Private Rights[11]
2. Emission Events: Maintenance, Startup and Shutdown Emissions
3. MACT Case-by-Case Programs
4. Public Participation
5. State and Federal Audit Acts

This paper was prepared July 2010 as a general discussion of the issues presented and is not to serve as, or to be relied upon as, legal advice. The views expressed in the paper are mine, and not of my law firm or its clients.

[10] *See* 30 TAC 117.2000-.2045 and 30 TAC 117.2100-.2145, respectively

[11] The author wishes to acknowledge the input of Alyssa M. Taylor, R.E.M., TCEQ Region 4 Air Section Manager, on this issue.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS,	
Petitioner,	
v.	**Case No.** 10-60459
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	cons. 10-60502
Respondent.	

PETITION FOR REVIEW

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), the State of Texas hereby petitions for review of the final action of the respondent United States Environmental Protection Agency published in the Federal Register at 75 Fed. Reg. 19468, et seq. (April 14, 2010) and titled, "Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Modification of Existing Qualified Facilities Program and General Definitions; Final Rule."

Respectfully submitted,

GREG ABBOTT
ATTORNEY GENERAL OF TEXAS

BILL COBB
Special Assistant and Senior Counsel
to the Attorney General

J. REED CLAY, JR.
Assistant Solicitor General

Office of the Attorney General of Texas
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-0131
Facsimile: (512) 936-0545
Email: bill.cobb@oag.state.tx.us

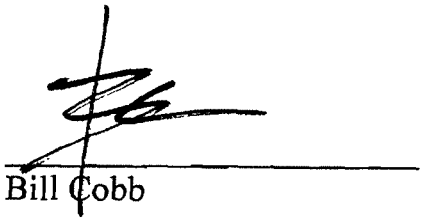
ATTORNEYS FOR THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I certify that on June 11, 2010, I served a copy of the foregoing Petition for Review by Federal Express Delivery on the following:

United States Environmental Protection Agency
Office of the Administrator
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

United States Environmental Protection Agency
Office of the General Counsel
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460



Bill Cobb

Federal Register

Wednesday,
April 14, 2010

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Modification of Existing Qualified Facilities Program and General Definitions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0025; FRL–9135–7]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Modification of Existing Qualified Facilities Program and General Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is taking final action to disapprove revisions to the SIP submitted by the State of Texas that relate to the Modification of Existing Qualified Facilities (the Qualified Facilities Program or the Program). EPA is disapproving the Texas Qualified Facilities Program because it does not meet the Minor NSR SIP requirements nor does it meet the NSR SIP requirements for a substitute Major NSR SIP revision.

EPA is also approving three definitions that are severable from the Qualified Facilities submittals. These three definitions we are approving are, "grandfathered facility," "maximum allowable emission rate table (MAERT)," and "new facility." Moreover, we are making an administrative correction to the SIP-approved definition of "facility."

We are taking this action under section 110, part C, and part D of the Federal Clean Air Act (the Act or CAA).

DATES: This rule is effective on May 14, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0025. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the following terms have the meanings described below:

- "we," "us," and "our" refer to EPA.
- "Act" or "CAA" means Federal Clean Air Act.
- "40 CFR" means Title 40 of the Code of Federal Regulations—Protection of Environment.
- "SIP" means State Implementation Plan as established under section 110 of the Act.
- "NSR" means new source review, a phrase intended to encompass the statutory and regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I, parts C and D, and 40 CFR 51.160 through 51.166.
- "Minor NSR" means NSR established under section 110 of the Act and 40 CFR 51.160.
- "Major NSR" means any new or modified source that is subject to NNSR and/or PSD.
- "NNSR" means nonattainment NSR established under Title I, section 110 and part D of the Act and 40 CFR 51.165.
- "PSD" means prevention of significant deterioration of air quality established under Title I, section 110 and part C of the Act and 40 CFR 51.166.
- "Program" means the SIP revision submittals from the TCEQ concerning the Texas Qualified Facilities Program.
- "NAAQS" means any national ambient air quality standard established under 40 CFR part 50.

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I. What Action Is EPA Taking?

EPA is taking final action to disapprove the Texas Qualified Facilities Program, as submitted by Texas on March 13, 1996, and July 22, 1998, in Title 30 of the Texas Administrative Code (30 TAC) at 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. This includes the following regulations under Chapter 116: 30 TAC 116.116(e), 30 TAC 116.117, 30 TAC 116.118, and the following definitions under 30 TAC 116.10—General Definitions: 30 TAC 116.10(1)—definition of "actual emissions," 30 TAC 116.10(2)—definition of "allowable emissions," 30 TAC 116.10(11)(E) under the definition of "modification of existing facility," and 30 TAC 116.10(16)—definition of "qualified facility." These regulations and definitions do not meet the requirements of the Act and EPA's NSR regulations. It is EPA's position that none of these identified elements for the submitted Qualified Facilities Program is severable from each other.

Secondly, in an action separate from the above action on the submitted Texas Qualified Facilities Program, we are approving the following severable definitions: 30 TAC 116.10(8)—definition of "grandfathered facility," 30 TAC 116.10(10)—definition of "maximum allowable emission rate table (MAERT)," and 30 TAC 116.10(12)—definition of "new facility." It is EPA's position that these definitions are severable from those in the submitted Texas Qualified Facilities Program; moreover, each is severable from each other.

EPA proposed the above actions on September 23, 2009 (74 FR 48450). We accepted comments from the public on this proposal from September 23, 2009, until November 23, 2009. A summary of the comments received and our evaluation thereof is discussed in section V below. In the proposal and in the Technical Support Document (TSD), we described our basis for the actions identified above. The reader should refer to the proposal, the TSD, section IV of this preamble, and the Response to Comments in section V of this preamble for additional information relating to our final action.

We are disapproving the submitted Texas Qualified Facilities Program as not meeting the requirements for a substitute Major NSR SIP revision. Our grounds for disapproval as a substitute Major NSR SIP revision include the following:

- It is not clearly limited to Minor NSR thereby allowing major modifications to occur without a Major NSR permit;
- It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing changes at existing facilities to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;
- It does not require that first an applicability determination be made whether the modification is subject to Major NSR thereby exempting new major stationary sources and major modifications from the EPA Major NSR SIP requirements;
- It does not include a demonstration from the TCEQ, as required by 40 CFR 51.166(a)(7)(iv), showing how the use of "modification" is at least as stringent as the definition of "modification" in the EPA Major NSR SIP program
- It does not include the requirement to make Major NSR applicability determinations based on actual emissions and on emissions increases and decreases (netting) that occur within a major stationary source;
- It fails to meet the statutory and regulatory requirements for a SIP revision;
- It is not consistent with applicable statutory and regulatory requirements as interpreted in EPA policy and guidance on SIP revisions; and
- EPA lacks sufficient available information to determine that the requested relaxation to the Texas Major NSR SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the Act.

In addition to the failures to protect Major NSR SIP requirements, EPA cannot find that the submitted Program, as an exemption to the State's Minor NSR SIP program, will ensure noninterference with NAAQS attainment, and there will not be a violation of applicable portions of a Texas SIP control strategy, as required by section 110(a)(2)(D) and 40 CFR 51.160(a)–(b). EPA cannot approve the exempting of certain modifications from obtaining a Minor NSR SIP permit as part of the Texas Minor NSR SIP because the Act and EPA regulations are not met and the State has not shown that the sources will have only a *de minimis* effect. The Program fails to include legally enforceable procedures to ensure that the State will not permit a modification that will violate the control strategies or interfere with NAAQS attainment. Our grounds for disapproval as a Minor NSR SIP revision include the following:

- It is not clearly limited to Minor NSR thereby allowing major modifications to occur without a Major NSR permit;
- It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing sources to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;
- It does not require that first an applicability determination be made whether the modification is subject to Major NSR thereby exempting new major stationary sources and major modifications from the EPA Major NSR SIP requirements;
- It fails to meet the statutory and regulatory requirements for a SIP revision;
- It is not consistent with applicable statutory and regulatory requirements as interpreted in EPA policy and guidance on SIP revisions;
- It is not an enforceable Minor NSR permitting program;
- It lacks legally enforceable safeguards to ensure that the exempted changes will not violate a Texas control strategy and will not interfere with NAAQS attainment;
- EPA lacks sufficient available information to determine that the requested relaxation to the Texas Minor NSR SIP will not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the Act.

The provisions in these submittals relating to the Texas Qualified Facilities State Program that include the Chapter 116 regulatory provisions and the nonseverable definitions in the General Definitions were not submitted to meet a mandatory requirement of the Act. Therefore, this final action to disapprove the submitted Texas Qualified Facilities State Program does not trigger a sanctions or Federal Implementation Plan clock. *See* CAA section 179(a).

II. What Submittals Is EPA Taking No Action On?

A. Subparagraph (F) Under the Definition of "Federally Enforceable"

On September 18, 2002 (67 FR 58697), EPA approved the definition of "federally enforceable" in 30 TAC 116.10(7), introductory paragraph and subparagraphs (A) through (E), as submitted July 22, 1998. We proposed to take no action on the submitted severable new subparagraph (F) under the SIP-approved definition of "federally enforceable," submitted September 11, 2000, because it is outside the scope of the SIP. *See* 74 FR 48450, at 48466. EPA is not finalizing action today on the proposal concerning the submitted 30 TAC 116.10(7)(F). This subparagraph (F) is severable from the final rulemaking on the Qualified Facilities Program

B. Definition of "Best Available Control Technology (BACT)"

On September 23, 2009, EPA proposed to disapprove the definition "best available control technology (BACT)" under 30 TAC 1161.10(3). 74 FR 48450, at 48463–48464. EPA is still reviewing approvability of this definition; therefore, we are not taking final action on the proposal today. This definition is severable from the final rulemaking on the Qualified Facilities Program. We will take final action on the definition of BACT when we take action on Texas's submission concerning NSR Reform (Rule Project Number 2005–010–116–PR), which also addresses BACT. *See* 74 FR 48450, at 48472.[1] Under the Consent Decree entered on January 21, 2010 in *BCCA Appeal Group* v. *EPA*, Case No. 3:08–cv–01491–N (N.D. Tex), EPA's final action concerning NSR Reform will be finalized by August 31, 2010.

C. Subparagraphs (A) and (B) of the Submitted Definition of "Modification of Existing Facility"

Also, on September 23, 2009, EPA proposed to disapprove 30 TAC 116.10(11) subparagraphs (A) and (B) of the submitted definition of "modification of existing facility," which are severable from the other submissions addressed in this notice but not severable from each other. 74 FR 48450, at 48464–48465. EPA is not taking final action today on the proposed disapproval of these submitted subparagraphs under the submitted definition of "modification of existing facility" at 30 TAC 116.0(11)(A) and (B). We are still reviewing the proposed disapproval of these subparagraphs 30 TAC 116.10(11)(A) and (B) which relate to "insignificant increases." These subparagraphs are severable from this final rulemaking on the Qualified Facilities Program. We will take final action on 30 TAC 116.10(11)(A) and (B) when we act on Texas's submission concerning Air Permits (SB 766) Phase II (Rule Project Number 99029B–116–A1). Under the Settlement Agreement in *BCCA Appeal Group* v. *EPA*, Case No. 3:08–cv–01491–N (N.D. Tex), that action will be finalized by December 31, 2012. Additionally, we have received petitions requesting EPA review of the State's implementation of Texas Commission on Environmental Quality's (TCEQ) permit by rule (PBR) program under Subchapter K (30 TAC Chapter 106).[2] EPA intends to review TCEQ's PBR program and its implementation in response to those petitions.

D. Subparagraph (G) of the Submitted Definition of "Modification of Existing Facility"

On September 23, 2009, EPA proposed to disapprove the subparagraph (G) at 30 TAC 116.10(11) of the submitted definition of "modification of existing facility." *See* 74 FR 48450, at 48465. EPA is not taking final action today on the proposed disapproval of the submitted subparagraph (G) of the definition of "modification of existing facility." We are still reviewing the proposed disapproval of this definition. This subparagraph states that changes to certain natural gas processing, treating, or compression facilities are not modifications if the change does not result in an annual emissions rate of any air contaminant in excess of the volume emitted at the maximum design capacity for grandfathered facilities. This definition is severable from this rulemaking on the Qualified Facilities Program. *See* 74 FR 48450, at 48452. We will take final action on 30 TAC 116.10(11)(G) when we act on Texas's submission concerning Air Permits (SB 766) Phase II (Rule Project Number 99029B–116–A1). Under the Settlement Agreement in *BCCA Appeal Group* v. *EPA*, Case No. 3:08–cv–01491–N (N.D. Tex), that action will be finalized by December 31, 2012.

E. Trading Provision in 30 TAC 116.116(f)

EPA proposed to take no action on the submitted portion of 30 TAC 116.116(f) that includes, among other things, a trading provision containing a cross-reference that is no longer in Texas's rules. *See* 74 FR 48450, at 48465–48466. EPA is not taking final action today on this submitted portion because we are still reviewing approvability of the provision. This portion of the provision is severable from this rulemaking on the Qualified Facilities Program. We will take final action on 30 TAC 116.116(f) when we take action on Texas's submission concerning NSR Rules Revisions; 112(g) Revisions (Rule Project No. 98001–116–AI). Under the Settlement Agreement in BCCA *Appeal Group* v. *EPA*, Case No. 3:08–cv–01491–N (N.D. Tex), that action will be finalized by October 31, 2011.

III. What Is the Background?

A. Summary of Our Proposed Action

Also on September 23, 2009 (74 FR 48450), EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that relate to the Modification of Qualified Facilities. These affected provisions include regulatory provisions at 30 TAC 116.116(e) and definitions of "actual emissions," "allowable emissions," a nonseverable portion of the definition at subparagraph (E) of "modification of existing facility," and "qualified facility" under Texas's General Definitions in Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. *See* 30 TAC 116.10(1), (2), (11)(E), and (16), respectively. EPA finds that these submitted provisions and definitions in the submittals affecting the Texas Qualified Facilities Program are not severable from each other.

In the September 23, 2009, EPA also proposed to take action on revisions to the SIP submitted by Texas that relate to the General Definitions in Chapter 116. EPA proposed to approve three of these submitted definitions, "grandfathered facility," "maximum allowable emissions rate table (MAERT)," and "new facility" at 30 TAC 116.10(8), (10), and (12), respectively. These definitions are severable from the Qualified Facilities Program.

EPA proposed to make an administrative correction to the severable submittal for the SIP-approved

[1] EPA made this determination in a separate proposed action published at 74 FR 48467, September 23, 2009. This proposal relates to Prevention of Significant Deterioration (PSD), Nonattainment NSR (NNSR) for the 1997 8-Hour Ozone Standard, NSR Reform, and a Standard Permit.

[2] Petitions, August 28, 2008, from the Environmental Integrity Project on behalf of the Galveston-Houston Association for Smog Prevention, Environmental Integrity Project, Texas Campaign for the Environment, Sierra Club, and Public Citizen; and January 5, 2009, supplementing the August 28, 2008, petition (the supplemental petition added the Environmental Defense Fund as an additional petitioner).

definition of "facility" under 30 TAC 116.10(6). Consistent with our proposal, EPA is finalizing this administrative correction in today's action. Specifically, EPA corrects a typographical error at 72 FR 49198 (August 28, 2007), to clarify that the definition of "facility," as codified at 30 TAC 116.10(6), was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. 74 FR 48450, at 48465.

See Sections I and IV for further information on EPA's final action on the above submittals.

Further, EPA proposed to disapprove the following severable definitions: (1) the submitted definition of "best available control technology (BACT)" and (2) subparagraphs (A) and (B) of the submitted definition of "modification of existing facility," which are severable from the other submissions but not severable from each other, and (3) subparagraph (G) of the submitted definition of "modification of existing facility." EPA proposed to take no action on the severable submitted subparagraph (F) for the SIP-approved severable definition of "federally enforceable" under 30 TAC 116.10(7) because the submitted paragraph relates to a federal program that is implemented separately from the SIP. In addition, EPA proposed to take no action on the severable submitted portion of a provision at 30 TAC 116.116(f) that includes, among other things, a trading provision containing a cross-reference that no longer is in Texas's rules. See Section II for further information on why EPA is not taking final action today on these submittals.

B. Summary of the Submittals Addressed in this Final Action

Table 1 below summarizes the changes that are in the SIP revision submittals. A summary of EPA's evaluation of each section and the basis for this action is discussed in Sections IV through VI of this preamble. The Technical Support Document includes a detailed evaluation of the submittals.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION.

Section	Title	Submittal dates	Description of change	Proposed action
30 TAC 116.10	General Definitions			
30 TAC 116.10(1)	Definition of "actual emissions".	3/13/1996	Added new definition	Disapproval.
		7/22/1998	Repealed and a new definition submitted as paragraph (1).	
30 TAC 116.10(2)	Definition of "allowable emissions".	3/13/1996	Added new definition	Disapproval.
		7/22/1998	Repealed and a new definition submitted as paragraph (2).	
		9/11/2000	Revised paragraphs (2)(A) through (D).	
30 TAC 116.10(6)	Definition of "facility"	3/13/1996	Added new definition	Administrative correction to clarify the definition of "facility" is in the SIP.
		7/22/1998	Repealed and a new definition submitted as paragraph (4). Approved 9/6/2006 (71 FR 52698).	
		9/4/2002	Redesignated to paragraph (6). Inadvertently identified as non-SIP provision in 8/28/2007 SIP revision.	
30 TAC 116.10(8)	Definition of "grandfathered facility".	3/13/1996	Added new definition	Approval.
		7/22/1998	Repealed and a new definition submitted as paragraph (6).	
		7/31/2002	Revised definition.	
		9/4/2002	Redesignated to paragraph (8).	
30 TAC 116.10(10)	Definition of "maximum allowable emission rate table".	3/13/1996	Added new definition	Approval.
		7/22/1998	Repealed and a new definition submitted as paragraph (8).	
		9/4/2002	Redesignated to paragraph (10).	
30 TAC 116.10(11)	Definition of "modification of existing facility".	3/13/1996	Added new definition	Disapproval of subparagraph (E).
		7/22/1998	Repealed and a new definition submitted as paragraph (9).	
		9/4/2002	Redesignated to paragraph (11).	
30 TAC 116.10(12)	Definition of "new facility"	3/13/1996	Added new definition	Approval.
		7/22/1998	Repealed and a new definition submitted as paragraph (10).	
		9/04/2002	Redesignated to paragraph (12).	
30 TAC 116.10(16)	Definition of "qualified facility".	3/13/1996	Added new definition	Disapproval.
		7/22/1998	Repealed and a new definition submitted as paragraph (14).	
		9/4/2002	Redesignated to paragraph (16).	
30 TAC 116.116	Changes to Facilities	3/13/1996	Added subsection (e)	Disapproval.
		7/22/1998	Repealed and a new 116.116(e) submitted.	Disapproval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION.—Continued

Section	Title	Submittal dates	Description of change	Proposed action
30 TAC 116.117	Documentation and Notification of Changes to Qualified Facilities.	3/13/1996	Added new section	Disapproval.
		7/22/1998	Repealed and a new 116.117 resubmitted.	
30 TAC 116.118	Pre-Change Qualification	3/13/1996	Added new section	Disapproval.
		7/22/1998	Repealed and a new 116.118 submitted.	

C. Other Proposed Relevant Actions on the Texas Permitting SIP Revision Submittals

The Settlement Agreement in *BCCA Appeal Group* v. *EPA*, Case No. 3:08–cv–01491–N (N.D. Tex), as amended, currently provides that EPA will take final action on the State's Public Participation SIP revision submittal on October 29, 2010. EPA intends to take final action on the submitted Texas Flexible Permits State Program by June 30, 2010, and the NSR SIP by August 31, 2010, as provided in the Consent Decree entered on January 21, 2010 in *BCCA Appeal Group* v. *EPA*, Case No. 3:08–cv–01491–N (N.D. Tex).

Additionally, EPA acknowledges and appreciates that TCEQ is developing a proposed rulemaking package to address EPA's concerns with the current Qualified Facilities rules. We will, of course, consider any rule changes if and when they are submitted to EPA for review. However, the rules before us today are those of the current Qualified Facilities program, and we have concluded that the current program is not approvable for the reasons set out in this notice.

IV. What Are the Grounds for This Disapproval Action of the Texas Qualified Facilities Program?

EPA is disapproving revisions to the SIP submitted by the State of Texas that relate to the Modification of Qualified Facilities, identified in the above Table 1. Sources are reminded that they remain subject to the requirements of the Federally- approved Texas SIP and may be subject to enforcement actions for violations of the SIP. *See* EPA's Revised Guidance on Enforcement During Pending SIP Revisions, (March 1, 1991). However, because the Qualified Facilities Program is a permitting exemption, not a permit amendment, this final disapproval action does not affect Federal enforceability of Major and Minor NSR SIP permits.

The provisions affected by this disapproval action include regulatory provisions at 30 TAC 116.116(e), 116.117, and 116.118; and definitions at 30 TAC 116.10(1), (2), (11)(E), and (16) under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. EPA finds that these submitted provisions and definitions in the submittals affecting the Texas Qualified Facilities Program are not severable from each other. Specifically, EPA is making the following findings and taking the following actions as described below:

A. Why the Qualified Facilities Program Submittal Is Unclear Whether it Is for a Major or Minor NSR SIP Revision

While the TCEQ and other commenters asserted that the program was intended to be limited to Minor NSR, we continue to be concerned that the program is not explicitly limited to Minor NSR. Specifically, EPA finds that the submittals contain no applicability statement or regulatory provision that limits applicability to minor modifications. The Program is analogous to two other Minor NSR programs in Texas's SIP because although they do not exempt facilities from NSR, as does the Qualified Facilities Program, they do exempt facilities from obtaining source-specific (*i.e.*, case-by-case) permits. However, both of the State's other Minor NSR programs include an applicability statement and a regulatory provision that expressly limits applicability to minor modifications.[3] Moreover, the Texas Clean Air Act clearly prohibits the use of these two other Minor NSR programs for Major NSR. *See* Texas Health and Safety Code 382.05196 and .057. Therefore, the absence of these provisions in the Qualified Facilities rules creates an unacceptable ambiguity in the SIP. Without a clear statement of applicability of the Program, the Program as submitted is confusing to the public, regulated sources, government agencies, or a court, because it can be interpreted as an alternative to evaluating the new modification as a major modification under Major NSR requirements. Because of the overbroad nature of the regulatory language in the State's SIP revision submittal, we find that the State has failed to limit its submitted Program only to Minor NSR. *See* 74 FR 48450, at 48456–48457 and Section V.E.1 below for further information.

Consequently, we evaluated this submitted Program as being a substitute for the Texas Major NSR SIP. We also evaluated it for approvability as a Minor NSR SIP. Accordingly, we evaluated whether the submitted Program meets the requirements for a Major NSR SIP revision, the general requirements for regulating construction of any stationary sources contained in Section 110(a)(2)(C) of the CAA, and the applicable statutory and regulatory requirements for an approvable SIP revision. *See* 74 FR 48450, at 48457.

B. Why the Submitted Texas Qualified Facilities Program Is Not Approvable as a Substitute Major NSR SIP Revision

EPA finds that the State failed to submit information sufficient to demonstrate that the submitted Program's regulatory text explicitly prevents the circumvention of Major NSR. Therefore, EPA is disapproving the Program as not meeting the Major NSR SIP requirements to prevent circumvention of Major NSR. *See* 74 FR 48450, at 48458; Sections V.C.2. and E. below for further information.

EPA finds that that the State failed to submit information sufficient to demonstrate that the submitted Program's regulatory text requires an evaluation of Major Source NSR applicability before a change is exempted from permitting. Therefore, EPA is disapproving the Program as not meeting the Major NSR SIP requirements that require the Major NSR applicability requirements be met. *See*

[3] The Standard Permits rules require a Major NSR applicability determination at 30 TAC 116.610(b), and prohibit circumvention of Major NSR at 30 TAC 116.610(c). Likewise, the Permits by Rule provisions require a Major NSR applicability determination at 30 TAC 106.4(a)(3), and prohibit circumvention of Major NSR at 30 TAC 106.4(b).

74 FR 48450, at 48458; Section V.C.2 below for further information.

We find that the Program is deficient for Major NSR netting for two main reasons. First, the Program may allow an emission increase to net out by taking into account emission decreases outside of the major stationary source and, in other circumstances, allow an evaluation of emissions of a subset of units at a major stationary source. Therefore, the Program does not meet the CAA's definition of "modification" and the Major NSR SIP requirements and is inconsistent with *Alabama Power v. Costle*, 636 F.2d 323, 401–403 (DC Cir. 1980) and *Asarco v. EPA*, 578 F.2d 320 (DC Cir. 1978). 74 FR 48450, at 48458–48459; Section V.C.1 below. Second, the Program authorizes existing allowable emissions, rather than actual emissions, to be used as a baseline to determine applicability. This use of allowables is inconsistent with the requirements of the Act for Major NSR and is contrary to *New York v. EPA*, 413 F.3d 3, 38–40 (DC Cir. 2005) ("New York I"). 74 FR 48450, at 48459; Section V.C.1 below.

EPA finds that it lacks sufficient available information to determine, pursuant to section 110(l) that the requested relaxation to the Texas NSR SIP would not interfere with any applicable requirement concerning attainment and RFP, or any other applicable CAA requirement. *See* 74 FR 48450, at 48459 for further information.

C. Why the Submitted Texas Qualified Facilities Program Is Not Approvable as a Minor NSR SIP Revision

EPA finds that the Program is not clearly limited to Minor NSR. The submitted Program also does not prevent circumvention of the Major NSR SIP requirements. The Program lacks requirements necessary for enforcement of the applicable emissions limitations, including a permit application and issuance process. Overall, the Program fails to include sufficient legally enforceable safeguards to ensure that the NAAQS and control strategies are protected. Furthermore, the Program provides a *de minimis* exemption from the Texas Minor NSR SIP, and therefore, it is a SIP relaxation, which creates a risk of interference with NAAQS attainment, RFP, or any other requirement of the Act. EPA lacks sufficient information to determine that this SIP relaxation would not interfere with these requirements. 74 FR 48450, at 48463. Additionally, the legal test for whether a *de minimis* threshold can be approved is whether it is consistent with the need for a plan to include legally enforceable procedures to ensure that the State will not permit a source that will violate the control strategy or interfere with NAAQS attainment, as required by 40 CFR 51.160(a)–(b). 74 FR 48450, at 48460. The State failed to demonstrate that this exemption will not permit changes that will violate the Texas control strategies or interfere with NAAQS attainment. Therefore, we are disapproving the submitted Qualified Facilities Program as a Minor NSR SIP revision because it does not meet sections 110(a)(2)(C) and 110(l) of the Act and 40 CFR 51.160.

The Qualified Facilities Program does not ensure protection of the NAAQS and prevent violations of any State control strategy. First, the Program fails to ensure that all participating Qualified Facilities must have obtained a Texas NSR SIP permit. Without the assurance that all Qualified Facilities have obtained a Texas NSR SIP permit, EPA cannot determine that all Qualified Facilities must have Federally enforceable emission limitations based on the chosen control technology, and that the Qualified Facility will not interfere with attainment and maintenance of the NAAQS or violate any control strategy. Therefore, EPA finds that the Qualified Facilities Program is inadequate to ensure that all Qualified Facilities have an appropriate allowable limit to prevent interference with attainment and maintenance of the NAAQS or violations of any State control strategy that is required by the Texas NSR SIP. See Section V.G.1 for further information. In addition, the Program does not require the owner or operator to maintain the information and analysis showing how it concluded that there will be no adverse impact on ambient air quality before undertaking the change. Therefore, EPA finds that the Qualified Facilities Program is inadequate to ensure that all changes under the Program that are exempted from permitting will not prevent interference with attainment and maintenance of the NAAQS or violations of any State control strategy that is required by the Texas NSR SIP. 74 FR 48450, at 48462; Section V.F.1.

Regarding the State's use of minor source netting in the Qualified Facilities Program, EPA makes the following findings:

The Qualified Facilities Program is inadequate because it fails to provide clear and enforceable requirements for a basic netting program. Therefore, this Program, as submitted, does not meet the fundamental requirements for an approvable Minor NSR netting program. To analyze the Program's Minor NSR netting for approvability, we used the fundamental principles of Major NSR and NSR netting because these principles are designed to ensure that there is no interference with the NAAQS and control strategies.[4] The Major NSR netting program requires the following: (1) An identified contemporaneous period, (2) the reductions must be contemporaneous and creditable, (3) the reductions must be of the same pollutant as the change, (4) the reductions must be real, (5) the reductions must be permanent, and (6) the reductions must be quantifiable. *See* 40 CFR 51.165(a)(1)(vi) (the definition of "net emissions increase"); 40 CFR 51.166(b)(3). To be considered creditable, the reduction's old level of emissions must exceed the new level of emissions, the reduction must be enforceable as a practical matter at and after the time the actual change begins, and the reduction must have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change. *See* 74 FR 48450, at 48461.

As discussed below, the Program's netting provisions do not meet all of the requirements; therefore, the Qualified Facilities netting is disapproved as a Minor NSR netting program.

- The Program fails to define a contemporaneous or other period for the netting and that the emission reductions must occur within that specified period. 74 FR 48450, at 48461; Section V.C.1 below.
- Emissions reductions under the Qualified Facilities program are not enforceable as a practical matter at and after the time of the actual change begins; and therefore, not sufficiently creditable. First, the Program fails to ensure a separate netting analysis is performed for each proposed change because the rules are not clear that reductions can only be relied upon once. Therefore, we find that the Program fails to prevent double counting; and consequently these types of reductions are not creditable. Second, the Program does not require that each Qualified Facility involved in the netting transaction must submit a permit application and obtain a permit revision reflecting all of the changes made to reduce emissions (relied upon in the netting analysis) as well as reflecting the change itself that increased emissions. As a result, emissions reductions are not enforceable; and therefore, not

[4] However, our analysis of the netting provisions in the Qualified Facilities Program under Minor NSR is not intended to create a binding Agency position on evaluating the approvability of Minor NSR netting.

sufficiently creditable. 74 FR 48450, at 48462; Section V.C.1.

• EPA proposed to find that the State's "interchange" methodology, submitted 30 TAC 116.116(e)(3), is consistent with the Federal requirement that reductions must be of the same pollutant as the change.[5] 74 FR 48450, at 48461. However, after evaluation of received comments, EPA finds that the term "sulfur compounds" in 30 TAC 116.116(e)(3)(F), is broad enough to include hydrogen sulfide. Hydrogen sulfide is a regulated NSR pollutant (*see* 40 CFR 52.21(b)(23)(i) and 52.21(i)(5)(i)) and, in certain instances, may require separate analysis from sulfur oxides in a netting analysis. Therefore, the interchange methodology may not ensure the health impacts of all sulfur compounds will be equal. The State failed to demonstrate that such use of hydrogen sulfide would protect the sulfur dioxides NAAQS. Additionally, this provision allows PM–2.5 to be interchanged with PM–10. However, because PM–10 and PM–2.5 are two separate pollutants and the State failed to demonstrate that such use of PM–10 would protect the PM–2.5 NAAQS, this interchange is inappropriate. Therefore, this provision is unapprovable for the sulfur dioxides and PM NAAQS. Section V.C.1 below.

• The Program also lacks any provisions that require the reductions to be permanent. Specifically, the submitted Program does not include provisions that either prohibit future increases at the Qualified Facility, or ensure that any future increase at a Qualified Facility at which a previous netting reduction occurred is analyzed in totality to assure that the NAAQS remains protected from the original increase. 74 FR 48450, at 48461; Section V.C.1 below.

Section 30 TAC 116.117(b) lacks any provisions that require a permit application to be submitted to TCEQ for a change under the Program. There are no provisions in 30 TAC 116.117(b) that clearly indicate that TCEQ must issue a revised permit for the changes made by all of the participating Qualified Facilities. Thus, EPA finds that the Program is not approvable because it lacks this requirement and therefore is not enforceable. *See* 74 FR 48450, at 48462, Section V.D.1 below.

The Qualified Facilities SIP submittal is a relaxation under CAA section 110(l) because it provides an exemption from NSR permitting not previously available to facilities. As such, this revision creates a risk of interference with NAAQS attainment, RFP, or any other requirement of the Act. EPA lacks information sufficient to make a determination that the requested SIP revision relaxation does not interfere with any applicable requirements concerning attainment and RFP, or any other applicable requirement of the Act, as required by section 110(l). *See* 74 FR 48450, at 48463.

For the reasons discussed above in this section and as further discussed below in Section V (Response to Comments), EPA is disapproving the submitted Qualified Facilities Program as not meeting section 110(a)(2)(C) and 110(l) of that Act and 40 CFR 51.160. *See* 74 FR 48450, at 48462.

D. Definition of "Facility"

EPA proposed to make an administrative correction to the severable submittal for the SIP-approved definition of "facility" under 30 TAC 116.10(6). Consistent with our proposal, EPA is finalizing this administrative correction in today's action. Specifically, EPA corrects a typographical error at 72 FR 49198 to clarify that the definition of "facility," as codified at 30 TAC 116.10(6), was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. 74 FR 48450, at 48465.

However, EPA wishes to note that each part of the Texas NSR program depends greatly upon the definition of "facility" that is applicable to it and upon how that definition is used in context within each part of the program. There are instances where a specific part of the Texas NSR program does not meet the Act and EPA regulations due to the definition of "facility" that applies to that part of the program. For example Texas's PSD non-PAL rules explicitly limit the definition of "facility" to "emissions unit," but the NNSR non-PAL rules fail to include such a limitation. 74 FR 48450, at 48475; *compare* 30 TAC 116.10(6) *to* 30 TAC 116.160(c)(3). TCEQ did not provide information to demonstrate that the lack of this explicit limitation in the NNSR SIP non-PALs revision is at least as stringent as the revised Major NSR SIP requirements. 74 FR 48450, at 48455; Section V.M. below.

V. Response to Comments

In response to our September 23, 2009, proposal, we received comments from the following: Sierra Club—Houston Regional Group; Sierra Club Membership Services (including 2,062 individual comment letters); Harris County Public Health and Environmental Services; Texas Commission on Environmental Quality; Members of the Texas House of Representatives; Office of the Mayor—City of Houston, Texas; University of Texas at Austin School of Law—Environmental Clinic; Baker Botts, L.L.P., on behalf of BCCA Appeal Group; Baker Botts, L.L.P., on behalf of Texas Industrial Project; Bracewell & Guiliani, L.L.P., on behalf of the Electric Reliability Coordinating Council; Gulf Coast Lignite Coalition; Texas Chemical Council.

A. General Comments

1. Comments Generally Supporting Proposal

Comment: Harris County Public Health & Environmental Services (HCPHES) acknowledges that EPA takes issue with the TCEQ regulations because of the lack of specificity regarding definitions and general lack of checks and balances to ensure that Federal requirements are met during the State's permitting processes, and because they do not meet the Minor NSR SIP and Major NSR SIP, including the Major NSR Nonattainment SIP requirements. Those concerns, currently unaddressed by the TCEQ, have ultimately resulted in EPA's proposed disapproval of portions of the TCEQ's most recent SIP submittal. HCPHES views a TCEQ program that meets the Federal requirements as being critical to ensuring that air quality in the Houston Galveston Brazoria (HGB) area returns to levels compliant with the NAAQS. HCPHES is very concerned that the TCEQ programs fall short of Federal requirements and encourages EPA to aggressively pursue the timely correction of these deficiencies to ensure the health, safety, and well being of the citizens of Harris County. HCPHES supports EPA's conclusion to disapprove portions of the SIP as proposed until such time as TCEQ addresses all of the specifics noted in the **Federal Register.**

Comment: Several members of the Texas House of Representatives support EPA's proposed disapproval of the Qualified Facilities Program. While the Qualified Facilities Program was a legislative creation, these members of the Texas House recognize that the statutory language and associated regulations are inconsistent with current CAA requirements regarding modifications and public participation. Particular concerns are:

• *Inadequate TCEQ oversight.* The rules authorize many changes at facilities without any pre-approval by TCEQ or procedures for denial for

[5] See 40 CFR 51.165(a)(1)(vi)(A) and 51.166(b)(3)(i), which define net emissions increase "with respect to *any regulated NSR pollutant.*" Emphasis added.

cause. These off-permit changes are difficult to track and enforce and may threaten ambient air quality.

• *The lack of understandable and traceable permits.* Texas industry, regulators, and the public should be able to obtain a permit, read it, and know what quantity of what pollutants the facility is authorized to emit. The off-permit changes authorized through the Qualified Facilities rules prevent such transparency.

Comment: Houston Regional Group of the Sierra Club (Sierra Club) supports EPA's analysis and agrees that all of the September 23, 2009, proposals (including the Qualified Facilities Program) should be disapproved. The commenter generally supported EPA's proposed disapproval of the Qualified Facilities Program; Flexible Permits Program; and Texas Major and Minor NSR SIP for 1997 8-hour and 1-hour ozone NAAQS, Prevention of Significant Deterioration (PSD) SIP, and Standard Permit for Pollution Control Projects. The commenter provided additional comments on our proposed disapproval of the Flexible Permits Program, which EPA will address in its separate action on the Flexible Permits Program.

Response: Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as discussed in detail at 74 FR 48450, at 48455–48463, and further support EPA's action to disapprove the Qualified Facilities submission.

Comment: The Sierra Club Membership Services (SCMS) sent numerous similar letters via e-mail that relate to this action. These comments include 1,789 identical letters (sent via e-mail), which included the following comments:

• The TCEQ is broken and the commenters applaud EPA's proposed ruling that major portions of the TCEQ air permitting program does not adhere to the CAA and should be thrown out;

• While agreeing that the proposed disapprovals are a good first step, the commenters state that EPA should take bold actions as follows:

—Halting any new air pollution permits being issued by TCEQ utilizing TCEQ's current illegal policy;

—Creating a moratorium on the operations of any new coal fired power plants in Texas until TCEQ cleans up its act by operating under the Federal CAA;

—Requiring coal companies clean up their old, dirty plants—no exceptions, no bailouts, and no special treatment—by reviewing all permits issued since TCEQ adopted its illegal policies and requiring that these entities resubmit their applications in accordance with the Federal CAA; and

—Put stronger rules in place in order to reduce global-warming emissions and to make sure new laws and rules do not allow existing coal plants to continue polluting with global warming emissions.

• The commenters further state that Texas: (1) Has more proposed coal and pet coke fired power plants than any other state in the nation; (2) Is number 1 in carbon emissions; and (3) Is on the list for the largest increase in emissions over the past five years.

• The commenters do not want coal to stand in the way of a clean energy future in Texas. Strong rules are needed to make sure the coal industry is held responsible for their mess and that no permits are issued under TCEQ's illegal permitting process. Strong regulations are vital to cleaning up the energy industry and putting Texas on a path to clean energy technology that boosts economic growth, creates jobs in Texas, and protects the air quality, health, and communities.

In addition, SCMS sent 273 similar letters (sent via e-mail) that contained additional comments. These additional comments include the following:

• Commenters suggest that Texas rely on wind power, solar energy, and natural gas as clean alternatives to coal.

• Other comments expressed general concerns related to: Impacts on global warming, lack of commitment by TCEQ to protect air quality, the need for clean energy efficient growth, impacts of upon human health, endangerment of wildlife, impacts on creation of future jobs in Texas, plus numerous other similar concerns.

Response: To the extent the SCMS letters comment on the proposed disapproval of the Qualified Facility program, they support EPA's action to disapprove the Qualified Facilities submission. The remaining comments are outside the scope of our proposed action relating to the Qualified Facilities Program.

Comment: The Environmental Clinic, the University of Texas at Austin School of Law (UT Environmental Clinic) commented that EPA should disapprove several other sections of 30 TAC Chapter 116.

Response: This final rulemaking only addresses the Qualified Facilities Program. Therefore, issues related to other portions of Texas's regulations are outside the scope of this rulemaking.

2. Comments Generally Opposing Proposal

Comment: TCEQ provided several general comments on the proposal. The TCEQ commented that the Qualified Facilities Program was developed by the 74th Texas Legislature through Senate Bill (SB) 1126, which became effective May 19, 1995. SB 1126 amended the Texas Clean Air Act by revising the definition of "modification of existing facility," which changed the factors used to determine whether a modification for State permitting (*i.e.* Minor NSR) has occurred. In 1996, 30 TAC Chapter 116 was revised to incorporate this legislative directive. These changes provide that modifications may be made to existing facilities without triggering the State's Minor NSR requirements whenever: (1) The facility to be modified has received a permit, permit amendment, or has been exempted from permitting requirements no earlier than 120 months from when the change will occur; or (2) uses air pollution control methods that are at least as effective as the Minor NSR SIP best available control technology (BACT) that the Commission required 120 months before the change will occur. Such facilities are designated as "qualified facilities."

TCEQ has always considered the Qualified Facilities Program to be applicable only to Minor NSR and not applicable to Major NSR, although this is not specifically stated in the rule. In summary, under the Qualified Facilities Program, TCEQ: (1) Determines Federal applicability as a first step in processing a Qualified Facilities request; and uses actual emissions, not allowable emission rates; (2) applies Federal NSR requirements when triggered; (3) does not circumvent Federal requirements applicable to major stationary sources or major modifications; (4) considers the use of "modification" to be separate and severable from the Federal definition of "modification" as reflected in the SIP-approved Major NSR Program; and (5) does not violate the approved SIP with regard to Major NSR or Minor NSR Program requirements.

Comment: The Texas Chemical Council (TCC) comments that it would be short-cited to analyze the three programs (Qualified Facilities, Flexible Permits, and NSR Reform) apart from the dramatic improvements in the air quality in Texas in the past 15 years. TCC goes on to describe these improvements. TCC supports full approval of Qualified Facilities. The Qualified Facilities Program is not intended to shield a source from major NSR. The Program is a robust, Federally enforceable program. The Qualified

Facilities Program is authorized by the TCAA, promotes flexibility, and allows sources to make certain changes without triggering NSR. If Major NSR is triggered, a facility cannot be a Qualified Facility. The definition of a Qualified Facility makes it clear that a Qualified Facility is an existing facility. A Qualified Facility may make a physical change in or change the operation of that facility as long as the change does not result in a net increase in allowable emissions of any air contaminant and does not result in the emission of any air contaminant not previously emitted. Additionally, the facility must be using equipment at least as effective as the BACT required by TCEQ. TCC supports full approval of the three Texas air permitting program submittals. The SIP revisions submitted to EPA by TCEQ over the last 15 years are critical components to Texas air permitting program. Texas should not be punished for EPA's failure to act within the statutory timeframe in the CAA. EPA offers little or no legal justification for proposing disapproval of these programs. EPA's proposed action will have an enormous impact on the country's largest industrial state. The SIP revision submittals for these programs are at least as stringent as the applicable Federal requirements and should be fully approved.

Comment: Bracewell & Giuliani LLP, counsel to the Electric Reliability Coordinating Council (ERCC), commented that Qualified Facilities provides incentives to implement pollution reduction measures at existing facilities. EPA's proposed disapproval does not provide any evidence that this authorization is actually used for major modifications or in fact interferes with air quality improvements. Discontinuance of this program could deter or delay many pollution reduction measures because the cost and resources associated with a full notice and comment case-by-case permit would outweigh the economic benefits of the additional controls. EPA should determine that the Qualified Facilities Program satisfies the CAA requirements for a state minor source program and retract the SIP disapproval and approve this SIP revision. EPA should recognize the validity of permits issued under the Texas permitting program and refrain from taking enforcement actions to address EPA concerns.

Comment: Jackson Walker, LLP, counsel to Gulf Coast Lignite Coalition GCLC, provided the following general comments on all three proposed disapprovals (Qualified Facilities, Flexible Permits, and NSR Reform): (1) Commenters disagree with all the proposed disapprovals because the SIP as implemented by TCEQ meets or exceeds CAA requirements and has met the goals of the CAA; (2) EPA has a history of focusing on results; so, EPA should look beyond immaterial differences in the rule provisions and focus on the positive results that Texas has achieved under the TCAA and the State's submittals; (3) Texas sources have relied on the submitted rules for as long as 15 years in some cases. To disapprove the submittals after so long puts too much burden on the regulated community, creates regulatory uncertainty, hurts the vulnerable economy by potentially increasing compliance costs, and may discourage future business expansion; and (4) GCLC requests that EPA work collaboratively, not combatively, with TCEQ to resolve any issues under the CAA.

Comment: Baker Botts, LLP, counsel for Texas Industry Project (TIP) and Business Coalition for Clean Air (BCCA) provided the following comments. TIP and BCCA support full approval of Qualified Facilities because the submittal will strengthen Texas's permitting program. EPA should work expeditiously with TCEQ to approve the Qualified Facilities Program. Further, under Texas's integrated air permitting regime, air quality in the state is demonstrating strong, sustained improvement. Commenters describe the air quality improvements in Texas in the recent past. Finally, commenters describe their understanding of how the Qualified Facilities Program operates. Qualified Facilities is a Minor NSR applicability trigger that allows existing emissions facilities that employ BACT to make changes without Minor NSR review as long as the changes do not result in net emissions increases. The Qualified Facilities Program is authorized by the TCAA and applies only to existing facilities. The term "facility" is analogous to the Federal definition of "emissions unit," under Texas's Title V program. *See* 30 TAC 122.10(8). The Texas Legislature created the Qualified Facilities Program as an incentive for sites to implement BACT. To be "qualified," the source must (1) have a permit or permit amendment or exempt from pre-construction permit requirements no earlier than 120 months before the change will occur, or (2) use air pollution control methods that are at least as effective as the BACT that was required or would have been required for the same class or type of facility by a permit issued 120 months before the change will occur. *See* 30 TAC 116.116(e). A qualified facility may lose its status as "qualified" if its permit, exemption, or control method falls outside the 10-year window. *See* Texas Nat'l Res. Conservation Comm'n, *Modification of Existing Facilities under Senate Bill 1126: Guidance for Air Quality*, (April 1996), 5 [hereinafter *Modification of Existing Facilities Guidance*].

Comment: Texas Oil & Gas Association (TxOGA) is encouraged that EPA is taking action to provide certainty in the regulatory process for businesses. TxOGA supports the ongoing goal of improved air quality; however, commenters do not believe that the proposed disapproval does anything to improve air quality in Texas. Further, the proposal may discourage future business expansion in Texas.

Response: EPA understands TCEQ's explanation of the origination of the Program in SB 1126. Nonetheless, the Qualified Facilities Program must meet all Federal requirements under the CAA in order to be approvable. The fact that EPA failed to act on the Qualified Facilities Program SIP revision within the statutory timeframe does not dictate the action EPA must take on the Program at this time. We cannot approve a program that fails to meet the requirements of the CAA. As discussed throughout our proposal and this final notice, the current Qualified Facilities Program fails to meet all requirements. We disagree with commenters that the Qualified Facilities Program is exclusively a Minor NSR program, based upon the ambiguities in the Program's rules. Furthermore, EPA need not prove that the Program is actually used for major modifications. EPA is required to review a SIP revision submission for its compliance with the Act and EPA regulations. CAA 110(k)(3); Natural *Resources Defense Council, Inc.* v. *Browner*, 57 F.3d 1122, 1123 (DC Cir. 1995); *American Cyanamid* v. *EPA*, 810 F.2d 493, 495 (5th Cir. 1987). This includes an analysis of the submitted regulations for their legal interpretation. The Program's rules are ambiguous and therefore do not adequately prohibit use under Major NSR. We recognize that TCEQ considers the Program to be a Minor NSR Program; however, the State admits that its rules are insufficient to limit the Program to Minor NSR. *See* 74 FR 48450, at 48456–48457; Section V.F. below for further information.

EPA enforcement of Federal requirements in Texas is outside the scope of this rulemaking. Additionally, comments on the Flexible Permits Program and the NSR Reform submittal are outside the scope of this notice. EPA will address the comments on its

proposed disapprovals of Flexible Permits and NSR Reform in separate actions on these programs.

B. Comments That This Action Is Inconsistent With the CAA

Comment: ERCC commented that EPA's proposed disapprovals are not rationally supported by case law and are inconsistent with the CAA. Congress placed primary responsibility for developing SIPs on the states, so permitting programs among states can vary greatly. EPA determines whether the state SIP satisfies the minimum requirements of the CAA. *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976), *rehearing denied* 429 U.S. 873 (1976); *Train* v. *NRDC*, 421 U.S. 60 (1975); *Florida Power and Light Co.* v. *Costle*, 650 F.2d 586 (5th Cir. 1979); 71 FR 48696, 486700 (August 21, 2006) (Proposed rule to promulgate a FIP under the CAA for tribes in Indian country). The Fifth Circuit Court of Appeals recently stated that "EPA has no authority to question the wisdom of a State's choice of emission limitations if they are part of a SIP that otherwise satisfies the standards set for in 42 U.S.C. 7410(a)(2)." *Clean Coalition* v. *TXU Power*, 536 F.3d 469 Fn.3 (5th Cir. Tex. 2008). Texas's permitting programs are based on the recognized Minor NSR flexibility and consistent with prior EPA approvals of other state SIPs. EPA must review other approved state programs to ensure that Texas's sources are not put at a competitive disadvantage. *See* Memorandum from John Seitz, Director, OAQPS, *SIP Consistency Process* (April 4, 10, 1996). EPA's proposed disapprovals could have dramatic impact on industries in Texas. EPA should solicit comments from all EPA regions on whether the proposed actions are inconsistent with other state SIPs and compare the stringency of the Texas programs to those of other states. ERCC is confident that EPA will realize that the Texas programs are consistent and possibly more stringent than other permitting programs throughout the country.

Response: EPA continues to recognize that permitting programs among states can vary greatly and provide some flexibility for Minor NSR SIP programs. However, in order to be approved as part of the SIP, the Qualified Facilities Program must meet all applicable Federal requirements. Here, the commenter's reliance on the Fifth Circuit's dicta in *Clean Coalition* is misplaced because the Qualified Facilities Program does not meet the standard set in 42 U.S.C. 7410(a)(2)(C). Section 42 U.S.C. 7410(a)(2)(C) requires the State to have a permitting program that complies with PSD and Nonattainment New Source Review (NNSR) permit requirements (at 42 U.S.C. 7475 and 7503, respectively), as well as Minor NSR permit requirements. As part of the State's permitting program, the Qualified Facilities Program fails to meet these requirements of the Act. As discussed throughout our proposal and this final action, the submitted Program fails to meet all requirements for an approvable permitting program, including submitting information sufficient to demonstrate that the Program is restricted only to Minor NSR. Commenters argue that the Qualified Facilities Program is consistent with other SIP approved programs; however, they fail to cite any specific examples.

C. Comments Addressing Whether the Qualified Facilities Rules Allow Sources to "Net Out" of Major and Minor NSR Through Rules That Are Not Adequate To Protect the NAAQS and State Control Strategies

1. Comments Generally Supporting Proposal

Comment: UT Environmental Clinic commented that the Qualified Facilities Program fails to meet the netting requirements for several reasons. The commenter notes that the Qualified Facilities Program netting calculations can be based on allowable emissions. Allowables netting violates Major NSR because it is inconsistent with *State of New York* v. *EPA*, 413 F.3d 3, 40 (DC Cir. 2005) and violates the CAA; it violates Minor NSR because it fails to require an evaluation of the actual emissions impacts on maintenance of the NAAQS.

Response: Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as a substitute for a Major NSR SIP program as discussed in detail at 74 FR 48450, at 48459, and further support EPA's action to disapprove the Qualified Facilities submission.

We find that the Program authorizes existing allowable, rather than actual emissions, to be used as a baseline to determine applicability. This use of allowables violates the Act for Major NSR SIP requirements and is contrary to *New York* v. *EPA*, 413 F.3d 3, 38–40 (DC Cir. 2005) ("New York I"). 74 FR 48450, at 48459. Under the submitted Program, the project's increases in emissions are calculated based upon its projected allowable emissions. The baseline uses the permitted allowable emission rate (lowered by any applicable state or Federal requirement) if the facility "qualified" under 30 TAC 116.10(11)(E)(i). If the facility "qualified" under 30 TAC 116.10(11)(E)(ii), the baseline uses the actual emission rate (minus any applicable state or Federal requirement). In the applicability netting analysis, the baseline for all the other participating minor and major existing Qualified Facilities is calculated in the same way. The emission reductions are calculated similarly, *i.e.*, reductions beyond the permitted allowable or actual emission rates (minus the applicable state and Federal requirements). Thus, this submitted Program allows an evaluation using allowable, not actual emissions, as the baseline to calculate the project's proposed emission increase and for many of the netting emission reductions, thereby in many cases possibly circumventing the major modification applicability requirements under the Major NSR rules. Therefore, the Program fails to meet the CAA and Major NSR requirements to use baseline actual emissions for major source netting as the starting point from which the amount of creditable emission increases or decreases is determined. 74 FR 48450, at 48459.

EPA agrees that the reductions in the Program's netting are not based on actual emissions. Such netting may be permissible for a Minor NSR Program; *provided* that the netting provisions assure protection of the NAAQS and the SIP control strategies as required by section 110(a)(2)(C) of the CAA. Allowables netting is acceptable because CAA section 110(a)(2)(c) does not explicitly prohibit the use of allowables netting for Minor NSR programs. However, Texas failed to submit sufficient information to demonstrate that the use of allowable emissions in a Minor NSR netting program continues to protect the NAAQS and control strategies; therefore, EPA cannot determine if this requirement is met. Today's rulemaking disapproves netting under the Qualified Facilities Program as a Minor NSR program, in part because the Program fails to ensure that ambient air is protected in consideration of all changes in the netting.

Comment: UT Environmental Clinic commented that the definitions in section 116.10 do not adequately specify how to calculate emissions reductions for purposes of the netting analysis. For example, the Texas definition of actual emissions is the "highest rate" actually achieved within the past 10 years. It is unclear whether this is the highest emission rate achieved at a single point in time or averaged over some period.

Response: We disagree that the reductions are not quantifiable. The

netting is based on the most stringent of the permitted emissions rate (which includes the highest achievable actual emission rate) or any applicable state or Federal rule. Nothing in the State's definition of "actual emissions" implies at all that there is any averaging involved in the calculations. The reduction is based upon the highest rate the facility achieved at a single point in time, looking back the past 10 years.

While we proposed to find that the reductions were quantifiable, we requested comments on two aspects of the Program as it relates to this principle. 74 FR 48450, at 48461–48462. First, we requested comment on whether the regulatory provisions at 30 TAC 116.10(1) and (2) provide clear direction on the appropriate calculation procedures sufficient to ensure the reductions are quantifiable. As stated above, we disagree with the commenter's argument that the definitions in section 116.10 do not adequately specify how to calculate emissions reductions for purposes of the netting analysis.

Second, the submitted rules provide that a Qualified Facility nets its emissions increase on the same basis as its allowable emissions limitation. 30 TAC 116.116(e)(3)(A). We requested comment on whether netting on such a basis is sufficiently quantifiable, and whether any additional provisions are necessary to ensure that the entire emissions increase is properly netted against reductions from the other Qualified Facility. We did not receive any comments on this second aspect of quantifiability under the Program. Because no comments were submitted showing the basis was not sufficiently quantifiable, we continue to believe that netting for a Minor NSR SIP program on the adequacy of the Program's netting of emissions increases on the same basis as its allowable emissions limitation, is sufficiently quantifiable.

Comment: UT Environmental Clinic commented that the Qualified Facilities rules allow all emission reductions at the same account number to be considered in the net emission calculation. In fact, the rules could be read to allow the "offsetting" of emissions above allowables by decreases in emissions at any "different facility." 30 TAC 116.110(3). Because an account number can include multiple sources, the Texas rules allow consideration of emission decreases from outside the major stationary source in violation of 42 U.S.C. 7411(a).

Response: Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as a substitute for a Major NSR SIP program as discussed in detail at 74 FR 48450, at 48458–48459, and further support EPA's action to disapprove the Qualified Facilities submission.

We find the Program is deficient for Major NSR netting because it may allow an emission increase to net out by taking into account emission decreases outside of the major stationary source [6] and, in other circumstances, allow an evaluation of emissions of a subset of units at a major stationary source.[7] The State failed to submit information sufficient to demonstrate that the Program includes the necessary replicability and accountability to prevent such circumvention. Therefore, the Program does not meet the CAA's definition of "modification" and the Major NSR SIP requirements and is inconsistent with *Alabama Power* v. *Costle*, 636 F.2d 323, 401–403 (DC Cir. 1980) and *Asarco* v. *EPA*, 578 F.2d 320 (DC Cir. 1978). 74 FR 48450, at 48458–48459.

Comment: UT Environmental Clinic commented that the Qualified Facilities netting rules only allow consideration of the increase in allowable emissions from the Qualified Facility undergoing a change, but consider the decreases from any other Qualified Facilities at the same account number. There is no consideration of all the emission increases so there is no adequate impacts analysis from the source.

Response: Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as a substitute for a Major NSR SIP program as discussed in detail at 74 FR 48450, at 48458–48459, and further support EPA's action to disapprove the Qualified Facilities submission.

Major NSR netting is based upon all contemporaneous increases and decreases at the same major stationary source that occur within a reasonable period that the states must define in their approved SIPs. The submitted Program's netting is not based upon all contemporaneous increases at the same major stationary source and not all decreases at the same major stationary source. However, the State contends that the Program is not intended to apply for Major NSR netting but only for Minor NSR netting. Moreover, the Program is not intended to allow contemporaneous netting. Instead, one looks to the increases from the proposed change and to decreases made at the same time as the proposed change. Such an approach, if fully delineated in the State's Program rules, would satisfy the minimum requirements for an approvable Minor NSR netting program *provided* that the ambient air is protected in consideration of all changes in the netting. Today's rulemaking disapproves netting under the Qualified Facilities Program as a Minor NSR program, in part because the Program fails to ensure that ambient air is protected.

Comment: UT Environmental Clinic commented that the Qualified Facilities rules do not define a contemporaneous period nor require that emission reductions occur within a specified period. EPA notes in the **Federal Register** that Texas intended that any relied-upon reductions occur simultaneously with the increase. However, the commenter argues that nothing in the rule requires this.

Response: We agree with the comment insofar as it asserts that the Program fails to define a contemporaneous period or require that emission reductions occur within a specified period. EPA finds that, while Texas intended that any relied-upon reductions occur simultaneously at the time of the increase,[8] the Program is deficient because it does not expressly define the applicable period in which the reductions must occur. See our response to the previous comment. 74 FR 48450, at 48461.

Comment: UT Environmental Clinic commented that because the Qualified Facilities rules allow reductions to be based upon allowable emissions, they do not ensure that reductions are real.

Response: We disagree that just because the reductions are based upon allowable emissions, these reductions are not real. For example, reviewing authority may presume that source-specific allowable emissions may be equivalent to the actual emissions. *See* 40 CFR 51.165(a)(1)(xii)(C) and 51.166(b)(21)(iii). The commenter fails to discuss why the use of allowable emissions makes the reductions not real.

Comment: The UT Environmental Clinic commented that the rules fail to ensure that netted reductions are permanent.

Response: We agree with the commenter that the Program lacks any provisions that require that the

[6] The Texas SIP defines an "account" to include an entire company site, which could include more than one plant and certainly more than one major stationary source. SIP rule 30 TAC 101.1(1), second sentence.

[7] Under the submitted Program, not all emission points, units, facilities, major stationary sources, or minor modifications at the site or their increases in emissions are required to be evaluated in the applicability netting analysis. So the Program fails to require the evaluation of emissions changes at the entire major stationary source correctly as required by the Major NSR SIP regulations. 74 FR 48459.

[8] See 21 Tex. Reg. 1573 (February 27, 1996).

reductions are permanent. For reductions to meet the netting requirement to be permanent, the rules must include a prohibition against future increases at the Qualified Facility, or include regulatory language that assures that any future increase at a Qualified Facility at which a previous netting reduction occurred is analyzed in totality to assure that the NAAQS remains protected from the original increase. However, the submitted Program does not include such provisions. Consequently, the Qualified Facilities rules are inadequate because they fail to ensure that the reductions are permanent.

Comment: UT Environmental Clinic commented that the rules do not prevent double counting of emission reductions.

Response: For an additional *separate* project, it appears that the state intended that the reductions must occur at the time of that *additional* project that will need to obtain additional reductions to net out. If the regulatory text was consistent with this approach, this limitation would prevent double counting of the netting reductions. The State's intent is that the holder of the permit is required to perform a new, separate netting analysis and rely upon reductions not relied upon in the first netting analysis. *See* 74 FR 48450, at 48461 (*citing* 21 Tex. Reg. 1573 (February 27, 1996); page 154 of the 1996 SIP revision submittal). We agree that the rules are not clear that a subsequent change at a Qualified Facility that previously relied upon netting must conduct a separate netting analysis that relies upon reductions that were not relied upon in the first netting analysis. EPA cannot find any provisions in the Program to ensure a separate netting analysis performed for each proposed change. Therefore, the Program fails to prevent double counting; and consequently these types of netting reductions are not enforceable as a practical matter at and after the time of the actual change begins; and therefore, not sufficiently creditable. 74 FR 48450, at 48461.

Comment: UT Environmental Clinic commented that the Qualified Facilities rules fail to ensure that the emission reductions are enforceable. Facilities provide notice of changes to Qualified Facilities on Form PI–E, which is not enforceable, and Qualified Facility changes that affect permitted facilities are not required to be incorporated into a permit until renewal or amendment. TCEQ noted in its Qualified Facility guidance that the form is not Federally enforceable "but is simply a form to provide information to demonstrate that the change meets qualified facility flexibility." Consequently, Qualified Facility reductions are allowed to remain unenforceable for years. Further, Texas rules make it unclear whether emission reductions are ever made enforceable because a portion of the definition of "allowable emissions" states that "[t]he allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls." 30 TAC 116.10(2)(F). This portion of the definition of "allowable emissions" states that "[t]he allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls." Additionally, there are no monitoring requirements in the Qualified Facilities rules to track compliance with commitments to reduce emissions of limitations on emissions increases.

Response: We agree that the Qualified Facilities rules fail to ensure that the emission reductions relied upon in a netting analysis are enforceable. We noted at 74 FR 48450, at 48462 that the rules do not require permits for these relied-upon reductions. We also agree that the Program does not require monitoring because no permit is required for each change. *See* Section V.D.1 below.

We disagree that 30 TAC 116.10(2)(F) makes the rules vague as to enforceability. This provision of the rule is defining how to calculate the baseline from which reductions occur. When calculating the allowable emissions for a Qualified Facility participating in the Program, one cannot count any reductions occurring as a result of the voluntary installation of controls. However, a facility can become "qualified" to use the Program by voluntarily installing controls. The reductions achieved by this voluntary installation of controls are not counted in the Qualified Facility's allowable emissions.

Comment: UT Environmental Clinic states that the Qualified Facilities rules do not ensure that emission reductions have the same health and welfare effects as the emission increase. Because the program allows the emission increase to be offset inside and outside the facility, it allows for emission increases close to the fence line, potentially affecting health and welfare of the surrounding community.

Moreover, the Qualified Facilities Program allows Qualified Facilities to offset emissions increases of one pollutant with emission decreases of another pollutant, as long as the pollutants are in the same "air contaminant category." The interchange methodology established by TCEQ [9] to ensure that compounds within the VOCs air contaminant category, as interchanged, will have an equivalent impact on air quality, is not included in the Texas rules or statute. The rule merely defines an "air contaminant category" as a group of related compounds, such as volatile organic compounds, particulate matter, nitrogen oxides, and sulfur compounds. 30 TAC 116.116(e)(3)(F). Clearly emissions of all sulfur compounds, say sulfur dioxide and hydrogen sulfide, are not equal in terms of health impacts. Likewise, the health impacts of fine PM emissions are of significantly greater concern than the impacts of larger particles.

Response: With regard to VOCs and nitrogen oxides, EPA disagrees with the comment above that the Program is deficient because the State's rules allow an offset of an emission increase pollutant with emission decrease of another pollutant, as long as the pollutants are in the same "air contaminant category." The State's interchange methodology goes beyond the fundamental principle to determine whether the interchange of different compounds within the same air contaminant category will result in an equivalent decrease in emissions; *e.g.*, one VOC for another VOC; for VOCs and nitrogen oxides. *See* 74 FR 48450, at 48461.

On the other hand, the term "sulfur compounds" in 30 TAC 116.116(e)(3)(F), is broad enough to include hydrogen sulfide. The State failed to demonstrate that use of hydrogen sulfide would protect the sulfur dioxides NAAQS. Therefore, we agree with the commenter that the interchange methodology does not ensure the health impacts of all sulfur compounds will be equal. With regard to the comment concerning particulate matter, the definition of "air contaminant category" allows PM–2.5 to be interchanged with PM–10. However, because PM–10 and PM–2.5 are two separate pollutants and the State failed to demonstrate that such use of PM–10 would protect the PM–2.5 NAAQS, this interchange is inappropriate. Therefore, we agree that the interchange methodology does not ensure the health impacts of all particulate matter will be equal.

We, however, disagree with the comment above that the Program fails to ensure that emission reductions have the same health and welfare effects as the emission increases. The State has established a methodology to use whenever there is a different location of emissions because of the intraplant

[9] See 74 FR 48455, n.3.

trading. For example, where the netting has the effect of moving emissions closer to the plant property line than the Qualified Facility to be changed, the State uses this methodology to analyze whether there could be an increase in off-site impacts. *See* 30 TAC 116.117(b)(5). We continue to believe that this will ensure the reductions have approximately the same qualitative significance for public health and welfare, which is required to ensure the reductions are creditable. Nevertheless, as stated above, we are disapproving the Qualified Facilities netting program as a substitute for a Major NSR SIP program and as a Minor NSR SIP program because the Program is inadequate to protect ambient air quality.

Comment: The UT Environmental Clinic commented that the Qualified Facilities netting Program does not adequately protect air quality under Minor NSR. Specifically, the Qualified Facilities netting provisions do not meet Federal netting standards, which are in place precisely to ensure that air quality is protected. The Program's failure to meet almost all of those basic netting requirements renders the rules inadequate.

Response: Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as a Minor NSR SIP program as discussed in detail at 74 FR 48450, at 48460–48462, and further support EPA's action to disapprove the Qualified Facilities submission.

Comment: The UT Environmental Clinic commented that the Program is clearly inadequate to ensure protection of the NAAQS and to prevent violations of control strategies. The rules cannot be approved as an exemption from Minor NSR permitting because they in no way ensure that the emission increases authorized pursuant to the rules will have a *de minimis* impact on air quality.

Response: We agree with the commenter that the Program is inadequate to ensure protection of the NAAQS for several reasons. As discussed below in Section V.G.1, we find that the Qualified Facilities rules are not clear that all Qualified Facilities must have obtained a Texas NSR SIP permit. Without the assurance that all Qualified Facilities have obtained a Texas NSR SIP permit, EPA cannot make the finding that each permit for a Qualified Facility includes an emission limitation based on the chosen control technology, with a determination that the Qualified Facility will not interfere with attainment and maintenance of the NAAQS or violate any control strategy. Therefore, the Program fails to ensure that all Qualified Facilities can operate up to a permitted allowable limit such that they do not interfere with attainment and maintenance of the NAAQS and do not violate any State control strategy, as required by the Texas NSR SIP.

Additionally, the Program fails to ensure that the NAAQS are protected because 30 TAC 116.117 lacks language requiring the owner or operator to maintain the information and analysis showing how it concluded that there will be no adverse impact on ambient air quality before undertaking the change.

We agree with the commenter that the Program does not qualify as a *de minimis* exemption from Minor NSR. The State has not provided sufficient information to demonstrate that the exempted changes from the Minor NSR requirements will have only a *de minimis* effect. See Section V.D.1 below for more information.

2. Comments Generally Opposing Proposal

Comment: TCEQ commented that the Qualified Facilities Program can only be used if a physical or operational change complies with Federal NSR requirements. In order to make a physical or operational change to a Qualified Facility, an owner or operator must demonstrate that the change does not result in a net increase in allowable emissions of any air contaminant previously authorized under state minor source review. 30 TAC 116.116(e)(1). Keeping in mind the State definition of "facility," 30 TAC 116.116(e)(2) and (3) allow a Qualified Facility to demonstrate that a state modification has not occurred by comparing allowable emissions to allowable emissions before and after a proposed change. Allowable emissions (both hourly and annual rates) are one of the criteria to provide "state qualified" flexibility because the facilities must exist and be authorized, and thereby have undergone appropriate permit review. In addition, no existing level of control can be reduced. 30 TAC 116.116(e)(8). The commenter states that for *major sources*, in addition to State requirements, the evaluation of emissions related to physical and/or operational changes is conducted on a baseline actual to either a projected actual or potential to emit base if applicable. 30 TAC 116.116(e)(4). This comparison is used to determine if an emission increase above the appropriate significance threshold for a particular Federal permitting program has occurred. From the Federal NSR standpoint, if a proposed physical or operational change would result in an emissions increase that exceeds a significance threshold, the appropriate analysis (netting) is triggered. If the results of the netting analysis indicate that a major modification has occurred, the appropriate Federal program(s) is triggered and Federal authorization must be obtained. In such a case, the Qualified Facilities Program would not be an applicable authorization pathway, and a State Minor NSR amendment must be obtained, along with the appropriate Federal NSR authorization. The exemption from the definition of "modification of an existing facility" under the Qualified Facilities Program does not relieve an owner or operator from conducting an evaluation to determine if a Federal major modification has occurred. TCEQ states that from the Federal standpoint, only the project's emission increases are evaluated (without consideration of emission decreases) to determine if a Federal applicability analysis (netting) has been triggered. If the project increases equal or exceed the netting threshold for the pollutant and this program, then a full contemporaneous netting exercise is conducted in an effort to determine if the modification is a major modification. If the project is a major modification, then the appropriate Federal NSR program, either PSD or nonattainment review, is triggered. A permit holder cannot use the "no net emissions increase" concept that is described in the Qualified Facilities Program rules as a mechanism to avoid a Federal NSR applicability analysis (netting).

Comment: TxOGA commented that the Qualified Facilities Program establishes an allowables-based trigger and has no effect on a permit holder's compliance obligations under Federal requirements. Texas rules clearly require compliance with Federal requirements. 30 TAC 116.117(a)(4) and (d). This interpretation is also supported by TCEQ guidance.

Comment: The TCC commented in response to EPA's assertion that a Major NSR applicability determination must be based on actual emissions, not allowables. TCC argues that the Qualified Facilities rules do not circumvent any Federal requirements for major stationary sources. TCC reiterates that a qualified facility must demonstrate that the change does not result in a net increase in allowables, the source must follow notification requirements, and the source cannot relax controls at the qualified facility.

Response: We acknowledge TCEQ's description of how the State intends to implement the Qualified Facilities Program; however, we have determined

that TCEQ's current rules are insufficient to prevent circumvention of Major NSR. EPA disagrees with the comments from TxOGA and TCC. The submitted Program lacks specific requirements that would require an owner or operator who proposes a change under the Qualified Facilities program to first conduct a Major NSR applicability analysis (netting) prior to receiving (or asserting) authorization under the Qualified Facilities Program.

Comment: TCEQ commented that for facilities undergoing an intraplant trade, where the allowable emissions at one facility are increased while allowable emissions at another facility are reduced an allowable-to-allowable comparison is used only to determine if a new emissions increase has occurred for State purposes. The emissions are reviewed simultaneously, which is more stringent than the Federal requirement that only requires contemporaneous emissions. If a net emissions increase has occurred, an owner or operator cannot use the Qualified Facilities Program to authorize the proposed project, and must find another State mechanism to obtain proper authorization. In addition, the commenter states that the owner or operator must submit pre-change notification if the intraplant trade moves emissions from the interior of a plant site closer to a property line. This gives TCEQ staff the ability to evaluate public protectiveness and evaluate any potential changes in off property impacts as they relate to all contaminants and pollutants with national standards, *i.e.* the NAAQS. This intraplant trade capability only exists to the extent that the project is a Minor NSR action, and does not apply if a major modification has been triggered under Federal NSR requirements.

Response: EPA disagrees with the commenter that under the Texas rules the Program's intraplant trading does not apply if a major modification has been triggered. As stated above, the program fails to require a Major NSR applicability analysis and is insufficient to prevent circumvention of Major NSR. Intraplant trading based on allowables to allowables netting is prohibited under Major NSR. *See State of New York et al.*, v. *EPA*, 413 F.3d 3, 40 (DC Cir. 2005). However, such netting may be permissible for a Minor NSR program, provided that the netting provisions assure protection of the NAAQS. *See* 74 FR 48450, at 48462. As discussed above, Texas's Qualified Facilities Program does not meet this requirement. EPA also finds that the Program does not adequately define a contemporaneous (or simultaneous) period or require that emission reductions occur within a specified period. As discussed above, we find that the Program fails to meet the Minor NSR netting requirement for a defined period in which the reductions must occur.

Comment: TIP and BCCA commented that the Qualified Facilities program exceeds Federal benchmarks for allowable-based Minor NSR triggers. This program is one of the mechanisms that EPA encouraged in its Flexible Air Permitting Rule (FAP) (74 FR 51418, 15423). Further, the program is more stringent than the Federal FAP Program because it requires up-to-date BACT. The Qualified Facilities Program is also comparable to the proposed allowables-based minor NSR trigger in EPA's proposed Indian Country rule, in which EPA allows the use of allowables to allowables netting. To justify the use of an allowables test, EPA distinguished the definition of "modification" under Minor NSR from that used for Major NSR. 71 FR 48696, 48701 (*citing State of New York, et al.*, v. *EPA* (DC Cir. Jun. 24, 2005)). The Qualified Facilities rules meet these criteria and are more stringent than the Federal model because it only extends this flexibility to well-controlled facilities.

The commenter reiterates that the Qualified Facilities Program does not effect a permit holder's obligation to comply with Federal requirements. An allowables-based trigger is permissible because the CAA and Federal regulations do not mandate a method for determining minor NSR. The Environmental Appeals Board confirmed that there is no mandated methodology for the emissions test used for minor NSR. *In re Tennessee Valley Authority*, 9 EAD 357, 461 (EAB September 15, 2000). Again, EPA employed an allowables-to-allowables test in its proposed Indian Country rule. States have great flexibility to determine applicability for Minor NSR and that includes the authority to use an allowables-based trigger. TCEQ rules articulate an overriding obligation to comply with Federal requirements. 30 TAC 116.117(a)(4) and (d). Therefore, the current Qualified Facilities rules prevent circumvention of Major NSR.

Response: EPA disagrees with the commenter. This rulemaking disapproves netting under the Qualified Facilities Program for Major NSR, in part because the Program fails to first require a Major NSR applicability demonstration to show that a proposed change does not trigger Major NSR before the source can take advantage of the Program. In contrast to the Qualified Facilities Program, under the proposed Indian Country rule, 40 CFR 49.153 would explicitly require the proposed new source or modification to determine applicability to Major NSR before taking advantage of the program. The source could only use allowables netting under the proposed Indian County rule after a Major NSR applicability determination. *See* 71 FR 48696, at 48705, 48728–48729. The Qualified Facilities rules are deficient because they lack such a requirement. Further, as described above, the Program fails to meet several other netting requirements for an approvable Minor NSR netting program.

EPA's FAP rule is an Operating permit under Title V, not Title I. 74 FR 51418, 51419. While the FAP rule recognizes the use of advance approval programs under Minor NSR, the use of such programs must ensure environmental protection and compliance with applicable laws. "[FAPs] cannot circumvent, modify, or contravene any applicable requirement and, instead, by their design must assure compliance with each one as it would become applicable to any authorized changes." *See* 74 FR 51418, 51422. Further, advance approval under the FAP must be made at the time of permit issuance, and consider the alternate operating scenarios for air quality impacts, control technology, compliances with applicable requirements, etc. Under Major and Minor NSR, advance approval must ensure compliance with control strategy and non-interference with attainment and maintenance of NAAQS for each operating scenario as required by 40 CFR 51.160. We do not see how the Texas Qualified Facility Rule meets these requirements.

D. Comments Addressing Whether the Qualified Facilities Rules Are Practically Enforceable

1. Comments Generally Supporting Proposal

Comment: The UT Environmental Clinic commented that the rules fail to ensure that netted reductions are enforceable.

Response: We agree with the commenter that the Program is unenforceable because it fails to explicitly require that a permit application must be submitted for the change and for any relied-upon emissions reductions in the netting analysis. Because the Program is an exemption from a preconstruction permit, and does not require a permit, the Program must qualify as a *de minimis* exemption to be approvable. We find that the Program does not

qualify as a *de minimis* exemption from Minor NSR. The legal test for whether a *de minimis* threshold can be approved is whether it is consistent with the need for a plan to include legally enforceable procedures to ensure that the State will not permit a source that will violate the control strategy or interfere with NAAQS attainment, as required by 40 CFR 51.160(a)–b). 74 FR 48450, at 48460. The State failed to demonstrate that this exemption will not permit changes that will violate the Texas control strategies or interfere with NAAQS attainment. Therefore all of the requirements under 40 CFR 51.160(a)–(b) apply to the Program.

Additionally, the Program allows too long of a lag time before a revised permit is issued in certain circumstances that can lead to a violation of a NAAQS, RFP, or control strategy without the TCEQ becoming aware of it in a timely manner. We proposed that the lag time for reporting a change under the Program should be no longer than six months, rather than a year, but we requested comment on whether six months is an acceptable lapse of time to ensure noninterference with the NAAQS and control strategies. 74 FR 48450, at 48462. We received no comments on this issue except that TCEQ stated they will consider this change during rulemaking. Therefore, we find that the Program allows too long of a lag time before reporting "qualified" changes.

Comment: The UT Environmental Clinic commented that the Program is clearly inadequate to ensure protection of the NAAQS and PSD increments and to prevent violations of control strategies.

Response: EPA agrees a Minor NSR SIP must include legally enforceable procedures enabling the State to determine whether construction or modification would violate a control strategy or interfere with attainment or maintenance of the NAAQS. 40 CFR 51.160(a)–(b). Furthermore, any Minor NSR SIP revision submittal that is a SIP relaxation, such as this Qualified Facilities Program, must meet section 110(l). The Qualified Facilities SIP submittal is a relaxation under CAA section 110(l) because it provides an exemption from NSR permitting not previously available to sources. This SIP relaxation creates a risk of interference with NAAQS attainment, RFP, or any other requirement of the Act. EPA lacks sufficient available information to determine that this SIP relaxation would not interfere with any applicable requirement concerning attainment and RFP, or any other requirement of the Act. *See* 74 FR 48450, at 48463.

2. Comments Generally Opposing Proposal

Comment: ERCC commented that the Qualified Facilities Program is enforceable for several reasons. The program's regulations include enforceable registration and recordkeeping requirements. Documentation must be maintained for all Qualified Facility changes that describes the change and demonstrates compliance with the Qualified Facility Program as well as state and Federal law. *See* 30 TAC 116.117(a). TCEQ regulations also require that, at a minimum, an annual submission is made to the agency documenting any qualified facility changes not incorporated into a facility permit. *See* 30 TAC 116.117(b). Pre-change qualification and approval are required for certain changes including: changes that affect BACT or where MAERT is not available (30 TAC 116.118); certain intraplant trading (30 TAC 116.117(4)); or if the change will affect compliance with a permit condition (30 TAC 116.117(3)). EPA's general comments questioning the proper permit application or registration for qualified facility authorization are unclear given the minor source nature of the program and its function as an exemption from a preconstruction permit. *See* 74 FR 48450, at 48462. The Program adequately imposes recordkeeping, reporting, notification and approval regulations to satisfy the minor NSR enforceability requirements.

Comment: TIP and BCCA also commented in response to EPA's argument that the Qualified Facilities Program is not enforceable because changes are not reflected in a permit. The program is a minor NSR triggering program. Instead of permit revision, a facility qualified to invoke the program must notify TCEQ of changes under the Qualified Facilities rules. 30 TAC 116.118. The commenters explain the scenarios when notification is required and the requirements for effective notification under the rules. Commenters also state that if a change implicates a permit special condition, the permit holder must revise its permit special condition using the procedures specified in Chapter 116, New Source Review. 30 TAC 116.116(b)(3).

Comment: The TxOGA commented that the Qualified Facilities Program is a minor NSR triggering provision that requires facilities to retain documentation and notify TCEQ of changes under the program. A facility must be qualified at the time the change is to occur. The program is enforceable because the rules contain notification and recordkeeping requirements.

Response: EPA disagrees with the commenters. The Program does not meet the Federal requirements for practical enforceability. To be approvable, a Minor NSR program must include enforceable emissions limits. *See* 74 FR 48450, at 48462. The Program is not clear that each Qualified Facility involved in the netting transaction must submit a permit application and obtain a permit revision reflecting all of the changes made to reduce emissions (relied upon in the netting analysis) as well as reflecting the change itself that increased emissions. *See* 74 FR 48450, at 48462. Therefore, the Program is unenforceable. Additionally, the Program allows too long of a lag time before a revised permit is issued in certain circumstances that can lead to a violation of a NAAQS, RFP, or control strategy without the TCEQ becoming aware of it in a timely manner. Because the Program is an exemption from a preconstruction permit, and does not require a permit, the Program must qualify as a *de minimis* exemption to be approvable. We find that the Program does not qualify as an approvable *de minimis* exemption from Minor NSR. *See* 74 FR 48450, at 48462; Section V.D.1. above. Therefore all of the requirements under 40 CFR 51.160(a)–(b) apply to the Program. As described throughout this notice, the Qualified Facilities Program fails to meet all of these requirements. *See* 74 FR 48450, at 48460. As stated above, the Program fails to require a permit that reflects all of the changes that occurred in the netting process and provides enforceable emissions limits. The notification and recordkeeping requirements, while beneficial, are not sufficient under Federal requirements to ensure enforceability.

E. Comments Addressing Whether the Qualified Facilities Rules Meet Federal Requirements for Major New Source Review

1. Comments Generally Supporting Proposal

Comment: The UT Environmental Clinic comments that nothing in the Qualified Facility statute or rules limits applicability to minor modifications. The rules require documentation at the plant site sufficient to comply with Nonattainment NSR and PSD, but do not clarify that changes that constitute a major modification cannot be made through a Qualified Facility change.

The commenter further stated that because the Qualified Facilities rules can be used to authorize major

modifications, the rules fail to meet the substantive requirements of Nonattainment NSR and PSD. For emission increases associated with PSD, the Qualified Facilities rules fail to require: (1) Best Available Control Technology; (2) an air quality analysis of impacts on the NAAQS and PSD increments; and (3) additional impact analysis associated with the implementation of the new source or modification. For emission increases associated with Nonattainment NSR, the Qualified Facilities rules fail to require: (1) Lowest Achievable Emission Rate; (2) emission offsets; and (3) demonstration of compliance by other facilities in the State.

Response: These comments are consistent with EPA's analysis concluding that Texas's Qualified Facilities Program does not meet Major NSR Substantive requirements as discussed at 74 FR 48450, at 48458–48459.

EPA agrees that the Program is deficient because it lacks provisions that require a Major NSR applicability determination for a change at a Qualified Facility before it is exempted from the permitting requirements. The Program's regulations do not contain any emission limitations, applicability statement, or regulatory provision restricting the change to Minor NSR. This lack of such express provisions distinguishes the Qualified Facilities Program from the Texas Minor NSR SIP rules for Permits by Rule in Chapter 106 and Standard Permits in Chapter 116, Subchapter F. The Standard Permits rules require a Major NSR applicability determination at 30 TAC 116.610(b), and prohibit circumvention of Major NSR at 30 TAC 116.610(c). Likewise, the Permits by Rule provisions require a Major NSR applicability determination at 30 TAC 106.4(a)(3), and prohibit circumvention of Major NSR at 30 TAC 106.4(b). The absence of these provisions in the Qualified Facilities rules creates an unacceptable ambiguity in the SIP. Therefore, the Program could allow circumvention of Major NSR. *See* 74 FR 48450, at 48456–48458.

EPA also agrees that the Program fails to address the required air quality impacts analysis. The comments concerning BACT, LAER, emissions offsets and a demonstration of compliance by other facilities in the State go beyond EPA's analysis in the proposal and are outside the scope of this rulemaking.

Additionally, section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any requirement concerning attainment and RFP, or any other requirement of the Act. There is not sufficient available information to enable EPA to determine that the submitted Program would not interfere with any requirement concerning attainment and RFP, or any other requirement of the Act. *See* 74 FR 48450, at 48459; and response above.

Comment: The Office of the Mayor, City of Houston, Texas, recognizes that the Qualified Facilities Program has no regulatory provisions that clearly prevent the Program from circumventing Major NSR SIP requirements thereby allowing changes at existing facilities to avoid the requirement to obtain preconstruction authorizations. Therefore, major sources of emissions are making major modifications to their facilities without going through the permitting process. The commenter states that this is a fatal flaw in the program, it is inconsistent with the CAA and should not be included in the SIP.

Response: The comments by the Office of the Mayor, City of Houston, Texas, are consistent with EPA's conclusions as discussed at 74 FR 48450, at 48456–48457 and response above.

2. Comments Generally Opposing Proposal

Comment: The TCC comments that Qualified Facilities is a Minor NSR Program because TCEQ's rules clearly require sources making changes under the Program to submit specific documentation, including "sufficient information as necessary to show that the project will comply with 40 CFR 116.150 and 116.151 of this title (relating to Nonattainment Review) and 40 CFR 116.160–116.163 of this title (relating to Prevention of Significant Deterioration Review) and with Subchapter C of this Chapter 116 (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (CAA 112(g), 40 CFR Part 63))." 30 TAC 116.117(a)(4).[10]

Response: As stated in the above, TCEQ's rules for Qualified Facilities are insufficient to prevent circumvention of major NSR. *See* 74 FR 48450, at 48456–48458.

Comment: ERCC commented that the Qualified Facilities Program is limited to Minor NSR. Qualified Facilities mandates compliance with 40 CFR 51.165 and 51.166, by clearly stating that any change authorized by Qualified Facilities shall not "limit the application of otherwise applicable state or Federal requirements." TCAA 382.0512(c). TCEQ regulations require that Qualified Facilities changes must be documented minor source modifications. *See* 30 TAC 116.117(a)(4); 30 TAC 116.117(d). EPA's dismissal of Section 116.117(a)(4) as a recordkeeping provision is unjustified. 74 FR 48450, at 48457. This Qualified Facilities regulatory reference to the PSD and NNSR programs requires the regulated entity to document that the change is in compliance with the Federal major source permitting programs and in compliance with state and Federal law.

Response: As stated above, the Qualified Facilities rules are insufficient to prevent circumvention of Major NSR. 74 FR 48450, at 48456–48458.

Although there are recordkeeping requirements in the Program at submitted 40 TAC 116.117(a)(4) requiring owners and operators to maintain documentation containing sufficient information as may be necessary to demonstrate that the project will comply with the Federal CAA, Title I, parts C and D, these are the same general provisions as those in the SIP at 30 TAC 116.111(a)(2)(H) and (I) for Minor *and* Major NSR SIP permits. These recordkeeping requirements, although necessary for NSR SIP approvability, cannot substitute for clear and enforceable provisions, consistent with Texas's other Minor NSR programs, that limit applicability in the submitted Program to Minor NSR only. 74 FR 48450, at 48456–48457.

Comment: TIP and BCCA comment that sources cannot use the Qualified Facilities Program to circumvent Major NSR. 30 TAC 116.117(a)(4) and (d); *Modification of Existing Facilities Guidance,* at 2. Senate Bill 1126, which authorized the Qualified Facilities program, does not supersede any Federal requirements. Further, "[i]f a change made under the qualified facility flexibility would result in the violation of a permit special condition, the permit holder must revise the permit special conditions to stay in compliance with the permit," through either the permit alteration process under 30 TAC 116.116(c) or the notification process of 30 TAC 116.117(d). *Modification of Existing Facilities Guidance,* at 9. Therefore, any changes to a facility must comply with Federal NSR and PSD rules. To further show that the current Qualified Facilities rules are sufficient to prevent circumvention, commenter cites to EPA's proposed Indian Country rule and recently approved state SIPs that do not contain explicit language

[10] In a separate SIP submittal dated February 1, 2006, Texas recodified the provisions of Subchapter C into Subchapter E. TCEQ's rules also state that nothing in the rules governing the Program shall limit the applicability of any Federal requirement. 30 TAC 116.117(d).

calling for a major NSR applicability determination before use of the minor NSR tools. ALASKA ADMIN. CODE tit. 18, § 50.502, approved 72 FR 45378 (August 14, 2007); 7 DEL. CODE REGS. § 1102, 65 FR 2048 (January 13, 2000) (granting limited approval based on EPA's concerns about public participation provisions). Further, no Federal requirement mandates such language. Therefore, it is arbitrary for EPA to require Texas to include additional language. *CleanCoalition v. TXU Power*, 536 F.3d 469, 472 (5th Cir. 2008).

Response: As stated above, EPA finds that the Qualified Facilities regulatory provisions are inadequate to prevent circumvention of Major NSR and limit the Program to minor modifications. TCEQ's rules and guidance are not clear on their face that circumvention of Major NSR requirements is prohibited. EPA does not understand how the permit alteration and notification requirements are relevant to the issue of circumvention of Major NSR. EPA disagrees with the commenter's analogy to the proposed Indian Country Minor NSR rule. Today's rulemaking disapproves the Qualified Facility Program for Major NSR, in part because the Program fails to first require a Major NSR applicability demonstration to show that a proposed change does not trigger Major NSR before the source can take advantage of the Program. In contrast, under the proposed Indian Country rule, 40 CFR 49.153 would explicitly require the proposed new source or modification to determine applicability to Major NSR before taking advantage of the program. 71 FR 48696, at 48705, 48728–48729. The source could only use allowables netting under the proposed Indian Country rule after it determined that Major NSR does not apply to the project. The Qualified Facilities rules are deficient because they lack such a requirement, *i.e.*, that Major NSR does not apply to the change.

Comment: The ERCC commented that EPA sent a comment letter on the Qualified Facilities proposed rule and agreed that it "adequately addresses the applicability of major sources and major modifications with respect to PSD and NA permitting requirements." 21 Tex. Reg. 1569 (February 27, 1996).

Response: We acknowledge our 1995 comment letter stating that Texas adequately satisfied our concern that the Qualified Facilities Program, as proposed, would not circumvent or supersede any Major NSR SIP requirements. Since we sent that letter, however, the Texas Legislature has revised the Texas Clean Air Act significantly. Specifically, in 1999, the Texas legislature added an explicit statutory prohibition against the use of an Exemption or Permit by Rule or a Standard Permit for major modifications. *See* Texas Health and Safety Code 382.05196 and .057. These 1999 legislative actions required a new legal review of the statutory definition for "modification of existing facility" to see if it was still limited to minor modifications. It is EPA's interpretation that the 1999 legislative changes made this statutory definition ambiguous. 74 FR 48450, at 48456–48457.

F. Comments Addressing Whether the Qualified Facilities Rules Meet Federal Requirements for Minor New Source Review

1. Comments Generally Supporting Proposal

Comment: The UT Environmental Clinic commented that the CAA requires SIPs to include a program for "regulation of the modification and construction of any stationary source." 42 U.S.C. 110(a)(2)(C). The program must prohibit any sources, including minor sources, from emitting pollution in amounts that contribute significantly to nonattainment and maintenance of the NAAQS or interfere with measures included in the SIP. 42 U.S.C. 110(a)(2)(D)(i)(I)–(II). EPA has recognized the valuable role that Minor NSR programs play in ensuring that air quality is protected from emissions that are not subject to Major NSR. Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations, U.S. EPA, Nov. 2002, at I–5–I–12. The Qualified Facilities Program is deficient as a Minor NSR program because:

- The Qualified Facility rules do not require enforceable limits. Qualified Facilities provide notification of "qualified" changes on form PI–E,[11] which TCEQ acknowledges is not enforceable. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY *Guidance for Air Quality, Qualified Changes Under Senate Bill 1126* (Dec. 2000), 27 [hereinafter *Qualified Facilities Guidance*]. Without enforceable limits, facilities can use emission reductions as part of a netting analysis and subsequently increase those emissions or rely on these reductions to offset other increases. Some Qualified Facility representations are consolidated into a preexisting permit upon revision or renewal at the discretion of the source. Even if representations in the PI–E were enforceable, there are no monitoring or reporting requirements to demonstrate compliance. 30 TAC 116.117(a). *See* 74 FR 48450 (Sept. 23, 2009), Docket, *Technical Support Document*, pg. 22.
- The Qualified Facility Rules do not include a pre-approval mechanism for all authorized emission increases. The rules have no mechanism that prevents implementation of Qualified Facility changes that may violate a control strategy or interfere with attainment or maintenance of the NAAQS. The Program only requires Qualified Facilities to obtain pre-approval of a Qualified Facility change if it involves interplant[12] trading above a "reportable limit." 30 TAC 116.117(b)(4). Facilities that do not rely on interplant trading are only required to report their changes on an annual basis. 30 TAC 116.117(b)(1).

Response: As stated above at Section V.D.1, EPA agrees with the first point that the submitted rules are practically unenforceable because the reductions are not incorporated into a permit. 74 FR 48450, at 48462.

EPA agrees with the commenter that the Program does not include a pre-approval mechanism for all authorized emission increases. Under section 110(a)(2)(A) and (C) of the Act, a Minor NSR SIP must require enforceable emission limits for all minor modifications. The Texas Program is not clear that for each Qualified Facility involved in the netting transaction, the owner or operator must submit a permit application and obtain a permit revision reflecting all of the changes made to reduce emissions (relied upon in the netting analysis) as well as reflecting the change itself that increased emissions. Furthermore, the Program's rules at 30 TAC 116.116(e)(4) and 116.117(b)(1)–(4) are not clear that the PI–E form is a *permit application or registration* that must be submitted and that a revised permit must be issued by TCEQ to reflect the changes made by all of the participating Qualified Facilities. There is no discussion of when TCEQ issues the revised permit. *See* the submittals at 30 TAC 116.117(b); 74 FR 48450, at 48462.

2. Comments Generally Opposing Proposal

Comment: The TCEQ commented that it has always considered the Qualified Facilities Program to be a Minor NSR Program although it is not stated in the rule. The rule requires the person making a change to maintain sufficient documentation to demonstrate that the

[11] 30 TAC § 116.117(b). See regulation text on pages 23–24 of the TSD for this action, which refer to 30 TAC 116.117(b)(2) and (4).

[12] Although the commenter refers to "*inter*plant" trading, the Texas rules referred to by the commenter relates to "*intra*plant" trading.

project will comply with 30 TAC 116.150 and 116.161 (Nonattainment NSR), 116.160–116.163 (Prevention of Significant Deterioration Review), and Chapter 116, Subchapter C (relating to implementing section 112(g) of the Act. 30 TAC 116.117(a)(4). A major modification may not occur without going through nonattainment or PSD review. If a project is determined to be a major modification, under PSD and/or nonattainment rules,[13] the owner/operator must obtain a Federal NSR permit/major modification. Then Qualified Facilities Program does not impair TCEQ's authority to control air pollution and take action to control a condition of air pollution if TCEQ finds that such a condition exists. Texas Water Code section 5.514. TCEQ commits to work with EPA to improve and clarify the rule language to ensure that the Qualified Facilities Program is specifically limited to Minor NSR changes. Texas comments that it does not apply the Qualified Facilities program to projects that are subject to Major NSR or subject to section 112(g) of the Act.

Response: We appreciate TCEQ's willingness to work with EPA to improve and clarify its rules to ensure that the Qualified Facilities Program does not apply to projects that are subject to Major NSR or subject to section 112(g). However, the Program is deficient because it fails to include specific provisions in its rules that assure that the Qualified Facilities Program does not apply to projects that are subject to Major NSR or subject to section 112(g). *See* 74 FR 48450, at 48456–48457.

Comment: ERCC commented that EPA has failed to demonstrate the proposed revisions interfere with Texas's ability to achieve the NAAQS. Specifically:

- Texas requires all air emissions from stationary sources (including minor sources) receive authorization from the State. Texas has developed an extensive program to meet the permitting and resource challenges of this requirement and the State's numerous and varied emission sources. States have discretion under the CAA to implement the state minor source program as long as it does not "interfere with attainment of the NAAQS. Aside from this requirement, which is stated in broad terms, the Act includes no specifics regarding the structure or functioning of minor NSR programs * * * as a result, SIP-approved minor NSR programs can vary quite widely from State to State." *Operating Permit Programs; Flexible Air Permitting Rule; Final Rule*, 74 FR 51,418 at 51,421 (Oct. 6, 2009). Therefore, ERCC requests that EPA re-evaluate and withdraw the proposed disapprovals. Texas air quality has shown dramatic improvement because of the three submitted programs. EPA fails to recognize that these programs are similar to other approved state minor NSR programs.
- EPA's proposed disapprovals do not meet Congress' or the Courts' documented standards for SIP disapproval. The CAA grants EPA authority to disapprove a SIP revision if such revision would interfere with the state's SIP. A revision interferes with the SIP if it impedes the state's ability to achieve the NAAQS. 42 U.S.C. 7410(l); S. Rep. No. 101–228, at 9, 1990 U.S.C.C.A.N. 3385, 3395; and *Train* v. *NRDC*, 421 U.S. 60, 79 (1975). The commenter argues that EPA has the burden to demonstrate that the submittals interfere with the NAAQS, but EPA's proposals shift this burden to Texas. *See Hall* v. *EPA*, 273 F.3d 1146, 1161 (9th Cir. Cal. 2001) (*citing Train*, 421 U.S. at 93 and *Ober* v. *Whitman*, 243 F.3d 1190, 1195 (9th Cir. 2001)) (requiring EPA's analysis to "rationally connect" approval of a revision to an area's likelihood of meeting the NAAQS).
- Since their submittal to EPA, the State's implementation of these rules has significantly reduced statewide emissions. These improvements can be demonstrated by reviewing both the records of emissions reductions and the reductions measured by Texas ambient air quality monitors.

ERCC further commented that Qualified Facilities is protective of air quality by limiting the use of this authorization under 30 TAC 116.116(e) and 30 TAC 116.10 (11)(E) and providing incentives to implement emission reductions. Like the Qualified Facilities Program, EPA's proposed Indian Country Minor NSR program is based upon an increase of allowable and not actual emissions. 71 FR 48696, at 48701. The EPA-developed Minor NSR program also utilizes emission rates in lieu of air quality impacts to determine exemptions from the Minor NSR definition of modification because "applicability determinations based on projected air quality impacts would be excessively complex and resource intensive." Id. at 48701.

Response: We agree that states have great flexibility to create their own Minor NSR SIP programs. However, at a minimum, those Minor NSR SIP programs must meet all of the Federal requirements. Likewise, the Qualified Facilities Program must meet all Federal requirements under the CAA in order to be approvable. Section V.C.1–2. As discussed throughout our proposal and this final notice, the current Qualified Facilities Program fails to meet all requirements. Moreover, the Qualified Facilities Program would be an exemption from the Texas Minor NSR SIP. The Program does not provide an alternative Minor NSR permit authorization process but instead exempts facilities from obtaining a NSR permit for changes. The State failed to demonstrate that this exemption is *de minimis* and thus that the exempted changes will not violate the Texas control strategies or interfere with NAAQS attainment, as required by section 110(a)(2)(c) and 40 CFR 51.160. 74 FR 48450, at 48460; *see also* Section V.C.1–2, D.1, and G. of this Response to Comments. Additionally, EPA lacks sufficient available information to determine that the requested SIP revision relaxation does not interfere with any applicable requirements concerning attainment and RFP, or any other applicable requirement of the Act, as required by section 110(l) of the Act. 74 FR 48450, at 48463; *see also* Section V.D.1.

EPA disagrees with the commenter's analogy to the proposed Indian Country Minor NSR rule. Today's rulemaking disapproves netting under the Qualified Facilities Program for Minor NSR, in part because the Program fails to first require a Major NSR applicability demonstration to show that a proposed change does not trigger Major NSR before the Qualified Facility can take advantage of the Program. The proposed Indian Country rule would explicitly require the proposed new source or modification first determine applicability to Major NSR before taking advantage of the program. 71 FR 48696, at 48705, 48728–48729. The source could only use allowables netting under the proposed Indian Country rule after it determined that Major NSR does not apply to the project. The Qualified Facilities rules are deficient because they lack the requirement for a Major NSR applicability determination, not because the Program allows allowables netting under Minor NSR. Further, while the commenter is correct that the proposed Indian Country rule would allow the use of emissions rates in lieu of air quality impacts, the use of emissions rates is only to establish applicability under Minor NSR. Such an approach is acceptable as long as the program assures protection of the NAAQS. 71 FR 48696, at 48701.

Comment: TIP and BCCA commented that SIP revisions are approvable if they do not interfere with the NAAQS. States have the primary responsibility for

[13] 40 CFR 51.165(a)(1)(v).

developing plans for attainment and maintenance of the NAAQS. *See CleanCOALition* v. *TXU Power*, 536 F.3d 469, 472 n.3 (5th Cir. 2008) (stating that "EPA has no authority to question the wisdom of a State's choices of emissions limitations if they are part of a SIP that otherwise satisfies the standards set forth in 42 U.S.C. 7401(a)(2)"). The last ten years have seen unprecedented improvement in Texas air quality, and Texas has been implementing the Qualified Facilities program during that time. The submittal does not raise interference concerns because it strengthens the existing SIP; therefore the Qualified Facilities program should be fully approvable. The proposal states that Qualified Facilities lacks safeguards to prevent interference with attainment and maintenance of the NAAQS. The commenters correlate this deficiency with EPA's comments on two facets of the submittal that EPA proposed to find approvable as long as ambient air is protected in the trading: (1) netting is not based on contemporaneous trading; and (2) the Program's netting is not based totally on changes in actual emissions. TIP states that the existing Qualified Facilities rules contain adequate safeguards of the NAAQS. Additionally, changes are sufficiently documented and quantified to ensure that a decrease at a facility will only be used in one netting analysis. The provision requires that sources must document compliance with Federal requirements safeguards the NAAQS. Commenter states that Qualified Facilities could be viewed as an exemption to Minor NSR requirements; however, the rules prevent changes that will violate the Texas control strategies or interfere with NAAQS attainment. Qualified Facilities flexibility is only allowed where the change will not result in a net increase above existing BACT, and BACT limits were set to protect the NAAQS. Qualified Facilities incorporates Texas's control strategies, and therefore, safeguards the NAAQS.

Response: As stated above, in order to be approved as part of the SIP, the Qualified Facilities Program must meet all applicable Federal requirements. Here, the commenter's argument is not supported by the Fifth Circuit's language in *CleanCOALition, 536 F.3d at 472 n.3*, because the Qualified Facilities Program does not meet 42 U.S.C. 7410(a)(2)(C). EPA agrees with the commenter that the Qualified Facilities Program is an exemption to the Texas Minor NSR SIP (and can be construed to be an exemption to the Texas Major NSR SIP). A requirement for approval of an exemption to a Minor NSR SIP is a demonstration that the exemption will not permit changes that will violate a state's control strategies or interfere with NAAQS attainment. Texas failed to submit such a demonstration. In addition, EPA lacks sufficient available information to determine that this SIP relaxation would not interfere with NAAQS attainment, RFP, or any other requirement of the Act. *See* Section V.D.1 above. Furthermore, EPA cannot find any provisions in the Program that require a separate netting analysis be performed for each such change. *See* 74 FR 48450, at 48461–48462. We also find that the Program does not prohibit future increases at a Qualified Facility, or include regulatory language that assures that any future increase at a Qualified Facility at which a previous netting reduction occurred is analyzed in totality to assure that the NAAQS are protected. The Qualified Facilities rules are deficient to protect the NAAQS for the reasons stated above, not because the Program allows allowables netting under Minor NSR. The commenter asserts that these safeguards exist in the Qualified Facilities Program but provides no citation or other basis to support its assertion. Finally, EPA finds that the Texas rules do not specifically require maintenance of information and analysis showing how a source concluded that there will be no adverse impact on air quality. 74 FR 48450, at 48462. The commenter provides no citation or other basis to show how the Qualified Facilities Program meets this requirement.

Comment: TxOGA commented that the documentation and notification requirements of 30 TAC 116.117 provide safeguards to ensure that changes will not violate the control strategy or interfere with attainment and maintenance of the NAAQS. Also, Qualified Facilities flexibility is only available where the change will not result in a net increase above BACT levels at well controlled facilities.

Response: As stated above, there is not sufficient available information to enable EPA to make a determination pursuant to section 110(l) that the Qualified Facilities Program, as a whole, would not interfere with any applicable requirement concerning attainment and RFP or any other requirement of the Act. Additionally, as required by section 110(a)(2)(C) and 40 CFR 51.160, the State failed to submit information to demonstrate that the Program, as an exemption from the Texas Minor NSR SIP, would not permit a source that will violate the control strategy or interfere with NAAQS attainment. *See* Section V.D.1 above for more information.

G. Comments Addressing Whether Existing Qualified Facilities Have Undergone an Air Quality Analysis

Comment: The UT Environmental Clinic disagrees with EPA's statement in the proposal that any Qualified Facility will have a Major or Minor NSR SIP permit, will have been subject to an air quality analysis, and will have demonstrated that its emissions have no adverse air quality impact. 74 FR 48450, at 48560 (Sept. 23, 2009). A facility can qualify as a Qualified Facility if it uses technology at least as effective as 10-year old BACT, "regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCCA, 382.057." 30 TAC 116.11(E)(ii). Likewise, the Qualified Facility rules specifically provide for preapproval of Qualified Status of those facilities that do not have an allowable emissions limit in a permit, PI–8 or PI–E form.

The commenter further states that, while Texas rules generally require emissions to have some sort of authorization, the rules do exempt some increases from the definition of "modification," thereby allowing these emissions to avoid any review. 30 TAC 116.10(11). For emissions that must be permitted, TCEQ's rules allow the use of various permitting mechanism that do not assure protection of the NAAQS and control strategy requirements. 30 TAC 116.110(a).

The commenter states that the rules additionally provide that unless one "facility" at an account has been subject to public notice under the Chapter 116 permitting or renewal provisions, total emissions from all facilities permitted by rules at an account shall not exceed the limits referenced in 30 TAC 106(a)(4). Because it is rare that at least one facility at an account has not been through public notice, companies are allowed to use multiple permits-by-rule to authorize emissions at a source. *See* UT Environmental Clinic Comment Letter, Attachment 5: Chart of facility PBR authorizations. TCEQ does not analyze the cumulative air quality impact of these multiple authorizations. TCEQ rules require permits-by-rule and standard permits to be "incorporated' into the facility's permit after the permit is renewed or amended; and there are no rules regarding procedures or modeling for such "incorporation."

Finally, the commenter stated that TCEQ has issued guidance that requires standard permits and PBRs that "directly affect the emissions of

permitted facilities" to be "consolidated by reference" at renewal or amendment. Texas Commission on Environmental Quality, *Permit by Rule and Standard Permit Consolidation Into Permits* (Sept 1, 2006), 3. Any PBRs and standard permits that do not affect emissions permitted facilities can be incorporated at the discretion of the permittee. *Id* at 4. The TCEQ guidance requires such PBRs and standard permits that are consolidated by incorporation to undergo an impacts review. Because these permits are renewed every ten years, this review may not occur for many years. Furthermore, PBRs do not require Texas BACT.

Response: We agree with the commenter's assertion that the submitted regulations do not explicitly require an air quality impacts analysis whenever a facility uses technology at least as effective as 10-year old Minor NSR BACT, "regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCCA 382.057." Further, facilities "qualified" using technology at least as effective as 10-year old Minor NSR BACT, must use actual emissions as a baseline. *See* 30 TAC 116.10(2) and 116.116(e)(2)(C). Presumably, this provision exists because facilities "qualified" under 30 TAC 116.10(11)(E)(ii), would not have a permitted allowable emissions limit because they lack an underlying permit. If a facility could be "qualified" without having a pre-construction permit, then the facility could net-out of permit requirements without ever having an air quality analysis of the baseline allowables limit. TCEQ's comments, which are summarized below, imply that State law requires all sources in Texas to get an underlying permit, and therefore, receive an air quality impact analysis. However, we view the State's comment to be vague as to whether a permit is a pre-requisite under the Program itself. Therefore, the Qualified Facilities rules are deficient because they fail to require an underlying Texas NSR SIP permit and air quality impact analysis in order to be "qualified" under the Program.

Comments concerning the State's permit-by-rule and standard permit programs are outside the scope of this rulemaking.

Comment: TCEQ commented that the Texas Legislature created the Qualified Facilities Program to provide flexibility to permitted facilities and to provide a means by which grandfathered facilities could apply control technology and become "qualified" grandfathered facilities without triggering Federal NSR. Subsequently, in 2001, the legislature required all grandfathered facilities to obtain authorization or shutdown. The program remains in effect as emissions are controlled, no new emissions above existing allowable limits are allowed, and Federal requirements are considered and met.

In summary, the Program reinforced the TCEQ's duties under the Texas Clean Air Act to protect air quality and control air contaminant emissions by *practical and economically feasible methods.* Tex. Health & Safety Code 382.002, 382.003(9)(e). Therefore, the environment has benefitted from the Program because emissions were controlled prior to the Texas Legislature mandating shut down or obtaining authorization; air quality benefitted as demonstrated by monitoring which measured continued improvement; regulated entities benefitted because they were given flexibility; and the State benefitted by reasonable regulation that encourages responsible economic development.

TCEQ also commented that allowable emissions (both hourly and annual rates) are one of the criteria used to provide "state qualified" flexibility because the facilities must exist and be authorized, and thereby undergone appropriate permit review.

Response: As stated above, we find that the Qualified Facilities rules fail to explicitly require a permit before a facility can be "qualified" under the Program. While TCEQ asserts that to become a Qualified Facility, a facility must undergo permit review and be authorized, the State does not cite to any regulatory provision in the Program that explicitly requires such permitting authorization. EPA recognizes that State legislation subsequent to the Qualified Facilities Program required grandfathered facilities to obtain permit authorizations or shut down. There is nothing sufficiently explicit, however, in the Qualified Facilities Rules that ensures all Qualified Facilities received an air quality impacts analysis through an initial permit application review process. It is commendable that TCEQ intends to implement its Qualified Facilities Program in a manner that may benefit the environment, but Texas failed to incorporate these procedures into its regulations; therefore, these procedures are not Federally enforceable.

H. Comments on the Definitions of "Grandfathered Facility," "Maximum Allowable Emission Rate Table," and "New Facility"

Comment: TCEQ and TCC agree with EPA's proposal to approve the definitions of "grandfathered facility," "maximum allowable emission rate table," and "new facility." The TCEQ urges EPA to take final action to approve these definitions.

Response: These comments further support EPA's action to approve these definitions.

I. Comments on the Definitions of "Actual Emissions," "Allowable Emissions," "Modification of Existing Facility" at (E), and "Qualified Facility"

Comment: TCEQ confirmed that Senate Bill 1126 amended the Texas Clean Air Act by revising the definition of "modification of existing facility," which changed the factors used to determine whether a modification for State permitting (*i.e.* Minor NSR) has occurred. In 1996, 30 TAC Chapter 116 was revised to incorporate this legislative directive. These changes provide that modifications may be made to existing facilities without triggering the State's Minor NSR requirements whenever:

- Authorization for the facility to be modified was issued a permit, permit amendment, or was exempted from permitting requirements within 120 months from when the change will occur; or
- Uses air pollution control methods that are at least as effective as the BACT that was required within 120 months from when the change will occur.

Such facilities are designated as "qualified facilities." TCEQ considers the use of "modification" to be separate and severable from the Federal definition of "modification" as reflected in the SIP-approved Major NSR Program.

TCEQ further asserts that the definitions of "actual emissions," "allowable emissions," "modification of existing facility" at (E) "qualified facility," respectively at 30 TAC 116.10(1), (2), (11)(E), and (16), meet Federal requirements.

Response: We are disapproving these definitions because they are not severable from the Qualified Facilities Program, and the State failed to submit information sufficient to demonstrate how these definitions meet Federal requirements. The definitions of "actual emissions" and "allowable emissions" include a statement that limits these definitions only when determining whether there has been a net increase in allowable emissions under 30 TAC 116.116(e), which implements the Qualified Facilities Program, and thus makes these definitions not severable from the Program. Subsection (E) of the definition of "modification of existing facility" *only* applies to changes that do not result in a net increase in allowable

emissions, which implements the Qualified Facilities Program, and thus makes this subsection not severable from the Program. The definition of "qualified facility" defines a term that is used in the Qualified Facilities Program, which makes it not severable from the Qualified Facilities Program.

Furthermore, the State did not provide sufficient information to demonstrate how these definitions meet Federal requirements. Additionally, State legislative actions in 1999 made the statutory definition of "modification of existing facility" ambiguous as to whether the definition is still limited to minor modifications. The State did not submit any legal support for TCEQ's assertion that the use of "modification" in the Texas Clean Air Act is for Minor NSR only; and therefore separate and severable from the definition of "modification" in the Texas Major NSR SIP. See 74 FR 48450, at 48456–48457 and Section V.E.2 above for further information.

J. Comments on the Definition of "Best Available Control Technology" ("BACT")

Comment: The UT Environmental Clinic, TCC, TIP, BCCA, TxOGA, GCLC, and TCEQ provided comments on EPA's proposed disapproval of TCEQ's definition of BACT.

Response: We are not taking final action on the definition of BACT in today's rulemaking; therefore, these comments are outside the scope of our rulemaking. They will be considered, however, in our final action on this definition.

K. Comments on Severable Portions of the Definition of "Modification of Existing Facility" at 30 TAC 116.10(11)(A) & (B)

Comment: The UT Environmental Clinic, TxOGA, TIP, BCCA, and TCEQ provided comments on EPA's proposed disapproval of TCEQ's changes to the definition of "modification of existing facility" at 30 TAC 116.10(11)(A) and (B) regarding insignificant increases.

Response: We are not taking final action on 30 TAC 116.10(11)(A) and (B) of the definition of "modification of existing facility" in today's rulemaking; therefore, these comments are outside the scope of our rulemaking. They, however, will be considered in our final agency action on these two definitions.

L. Comments on the Definition of Severable Subsection of "Modification of Existing Facility" at 30 TAC 116.10(11)(G)

Comment: The UT Environmental Clinic and TCEQ provided comments on the proposed disapproval of 30 TAC 116.10(11)(G) of the definition of "modification of existing facility."

Response: We are not taking final action on 30 TAC 116.10(11)(G) of the definition of "modification of existing facility" in today's rulemaking; therefore, these comments are outside the scope of our rulemaking. They will be considered, however, in our final agency action on this definition.

M. Comments on the Reinstatement of the Previously Approved Definition of "Facility"

Comment: The TCEQ acknowledges that EPA proposes to correct a typographical error in 72 FR 49198 to clarify that the definition of "facility," as codified at 30 TAC 116.10(6), was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. 74 FR 48450, at 48455 at n.6.

Response: EPA thanks TCEQ for its acknowledgement that the definition of "facility" at 30 TAC 116.10(6) was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. We are making the administrative change to correct the typographical error in the Code of Federal Regulations.

In our proposed rule notice, we requested comments on the State's legal meaning of the term "facility." *See* 30 TAC 116.10(6). We stated that the interpretation of this term is critical to our understanding of the Texas Permitting Program. We received the following comments on this issue:

1. Comments Generally Supporting Proposal

Comment: The UT Environmental Clinic understands that EPA's proposal is only to correct a typographical error that inadvertently removed the definition of "facility" from the SIP. The commenter notes, however, that Texas's use of this term is problematic because of its dual definitions and broad meanings. The commenter compares Texas's definition of "facility" in 30 TAC 116.10 with the definition of "stationary source" in 30 TAC 116.12 and the definition of "building, structure, facility, or installation" in 30 TAC 116.12 and conclude that these definitions are quite similar. The commenters acknowledge that this argument assumes that one can rely on the Nonattainment NSR rules to interpret the general definitions. If one cannot use the Nonattainment NSR definitions to interpret the general definition of "facility," then one must resort to the definition of "source" in 30 TAC 116.10(17), which is defined as "a point of origin of air contaminants, whether privately or publicly owned or operated." Pursuant to this reading, a facility is more like a Federal "emissions unit." 40 CFR 51.165(a)(1)(vii). "'Emissions unit' means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant ..." At least in the Qualified Facility rules, it appears that TCEQ use of the definition of "facility" is more like a Federal "emissions unit." The circular nature of these definitions, and the existence of two different definitions of "facility" without clear description of their applicability, makes Texas's rules, including the Qualified Facility rules, vague. Commenters urge EPA to require Texas to clarify its definition of "facility" and to ensure that its use of the term throughout the rules is consistent with that definition.

2. Comments Generally Opposing Proposal

Comment: TCEQ responded to EPA's request concerning its interpretation of Texas law and the Texas SIP with respect to the term "facility." The definition of "facility" is the cornerstone of the Texas Permitting Program under the Texas Clean Air Act. In addition, to provide clarity and consistency, TCEQ also provides similar comments in regard to Docket ID No. EPA–R06–OAR–2005–TX–0032 and EPA–R06–OAR–2006–0133. EPA believes that the State uses a "dual definition" for the term facility. Under the TCAA and TCEQ rule, "facility" is defined as "a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. Tex. Health & Safety Code 382.003(6); 30 TAC 116.10(6). A mine, quarry, well test, or road is not considered to be a facility." A facility may contain a stationary source—point of origin of a contaminant. Tex. Health & Safety Code 382.003(12). As a discrete point, a facility can constitute but cannot contain a major stationary source as defined by Federal law. A facility is subject to Major and Minor NSR requirements, depending on the facts of the specific application. Under Major NSR, EPA uses the term "emissions unit" (generally) when referring to a part of a "stationary source," TCEQ translates "emissions unit" to mean "facility," [14] which is at least as stringent as Federal rule. TCEQ and its predecessor agencies have consistently interpreted facility to preclude inclusion of more than one stationary source, in contrast to EPA's stated understanding. Likewise, TCEQ

[14] The term "facility" shall replace the words "emissions unit" in the referenced sections of the CFR. 30 TAC 116.160(c)(3).

does not interpret facility to include "every emissions point on a company site, even if limiting these emission points to only those belonging to the same industrial grouping (SIC Code)." The Federal definition of "major stationary source" is not equivalent to the state definition of "source." 40 CFR 51.166(b)(1)(a). A "major stationary source" [15] can include more than one "facility" as defined under Texas law—which is consistent with EPA's interpretation of a "major stationary source" including more than one emissions unit. The above interpretation of "facility" has been consistently applied by TCEQ and its predecessor agencies for more than 30 years. The TCEQ's interpretation of Texas statutes enacted by the Texas Legislature is addressed by the Texas Code Construction Act. More specifically, words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. Tex. Gov't Code 311.011(b). While Texas law does not directly refer to the two steps allowing deference enunciated in *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, Texas law and judicial interpretation recognize *Chevron* [16] and follow similar analysis as discussed below. The Texas Legislature intends an agency created to centralize expertise in a certain regulatory area "be given a large degree of latitude in the methods it uses to accomplish its regulatory function." *Phillips Petroleum Co.* v. *Comm'n on Envtl. Quality*, 121 S.W.3d 502, 508 (Tex.App.—Austin 2003, no pet.), which cites Chevron to support the following: "Our task is to determine whether an agency's decision is based upon a permissible interpretation of its statutory scheme." Further, Texas courts construe the test of an administrative rule under the same principles as if it were a statute. *Texas Gen. Indem. Co.* v. *Finance Comm'n*, 36 S.W.3d 635,641 (Tex.App.—Austin 2000, no pet.). Texas Administrative agencies have the power to interpret their own rules, and their interpretation is entitled to great weight and deference. *Id.* The agency's construction of its rule is controlling unless it is plainly erroneous or inconsistent. *Id.* "When the construction of an administrative regulation rather than a statute is at issue, deference is even more clearly in order." *Udall* v. *Tallman*, 380 U.S. 1, 17 (1965). This is particularly true when the rule involves complex subject matter. *See Equitable Trust Co.* v. *Finance Comm'n*, 99 S.W.3d 384, 387 (Tex.App.—Austin 2003, no pet.). Texas courts recognize that the legislature intends an agency created to centralize expertise in a certain regulatory area "be given a large degree of latitude in the methods it uses to accomplish its regulatory function." *Reliant Energy, Inc.* v. *Public Util. Comm'n*, 62 S.W.3d 833,838 (Tex.App.—Austin 2001, no pet.)(citing *State* v. *Public Util. Comm'n*, 883 S.W.2d 190, 197 (Tex. 1994). In summary, TCEQ translates "emissions unit" to mean "facility." Just as an "emissions unit" under Federal law is construed by EPA as part of a major stationary source, a "facility" under Texas law can be a part of a major stationary source. However, a facility cannot include more than one stationary source as defined under Texas law.

Comment: TCC, BCCA, TIP, and TxOGA commented that Texas rules are clear that "facility," as defined in 30 TAC 116.10(6) is equivalent to the TCEQ term "emissions unit."[17] TCC also stated that the definition of "facility" is so broad that it requires every possible source of air contaminants to obtain some type of approval from TCEQ.

Response: We have determined that Texas's use of this term "facility," as it applies to the State's Qualified Facilities Program, is overly vague, and therefore, unenforceable. TCEQ comments that it translates "emissions unit" to mean "facility." Yet, Texas's PSD non-PAL rules explicitly limit the definition of "facility" to "emissions unit," but the Qualified Facilities rules fail to make such a limitation. 74 FR 48450, at 48475; *compare* 30 TAC 116.10(6) *to* 30 TAC 116.160(c)(3). The State clearly thought the prudent legal course was to limit "facility" explicitly to "emissions unit" in its PSD SIP non-PALs revision. However, TCEQ did not submit information sufficient to demonstrate that the lack of this explicit limitation in the submitted Qualified Facilities revisions is at least as stringent as the revised definition in the PSD non-PALs definition.

We recognize that TCEQ should be accorded a level of deference to interpret the State's statutes and regulations; however, such interpretations must meet applicable requirements of the Act and implementing regulations under 40 CFR part 51 to be approvable into the SIP as Federally enforceable requirements. The State has failed to provide any case law or SIP citation that confirms TCEQ's interpretation for "facility" under the Qualified Facilities Program that would ensure Federal enforceability.

Nevertheless, as stated above, the definition of "facility" at 30 TAC 116.10(6) was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. Therefore, EPA is obligated to correct the typographical error and reinstate the definition of "facility" into the Code of Federal Regulations.

However, today's final disapproval of the Qualified Facilities Program is based in part on the lack of clarity of the definition of "facility" as it applies specifically to this Program. Additionally, EPA has proposed disapproval of the State's Flexible Permit Program and NSR Reform SIP submittals partially based on the need for clarity of the definition of "facility" as it applies to those programs.

N. Comments on the Definition of the Term "Air Quality Account Number"

Comment: The TCEQ commented that it no longer uses the term "air quality account number" and now uses the term "account," which is a SIP-approved definition.[18] Administrative changes to the Qualified Facilities Program are planned to reflect the change in terms.

Response: EPA's evaluation of "account" and "air quality account number" were based upon the SIP-approved definition of "account." 74 FR 48450, at 48455, n.7. The State's comment that it no longer uses "air quality account number" but uses "account" does not change EPA's final decision to disapprove the Qualified Facilities Program SIP revision submittal. In fact, the State's using a different definition that is not in the Qualified Facilities Program's rules

[15] Tex. Health & Safety Code § 382.003(12).

[16] *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 387, 842–43 (1984). "When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously express intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."

[17] Additionally, the definition of "facility" is similar to the definition of "emission unit" in Texas's Title V rules. 30 TAC 122.10(8).

[18] 30 TAC 101.1(1) Account—For those sources required to be permitted under Chapter 122 of this title * * *, all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railways, rights-of-way, waterways, or similar divisions. Approved as part of the Texas SIP at 70 FR 16129 (March 30, 2005).

provides additional grounds for disapproval. The Qualified Facilities Program's rules must be clear about which sources on a site can participate in the netting process. This goes to the heart of whether the changes are made outside a major stationary source. If TCEQ makes the planned changes noted in the comment letter, the changes must be adopted and submitted to EPA for approval as a SIP revision. Upon receipt, we would review the regulatory changes and evaluate whether they meet the Act and EPA regulations.

The Texas SIP defines an "account" to include an entire company site, which could include more than one plant and more than one major stationary source. SIP rule 30 TAC 101.1(1), second sentence. It does not limit the combination of sources to a SIC code. As stated above, EPA interprets the Program to allow an emission increase to net out by taking into account emission decreases outside of the major stationary source. Therefore, the Program does not meet the CAA's definition of "modification" and the Major NSR SIP requirements and is inconsistent with *Asarco* v. *EPA*, 578 F.2d 320 (DC Cir. 1978). 74 FR 48450, at 48458–48459; Section IV.B. above.

O. Comments on Whether the Qualified Facilities Rules Meet New Source Review Public Participation Requirements

1. Comments Generally Supporting Proposal

Comment: HCPHES commented that the State's public participation rules are not user friendly with regards to timeliness of initial notification and the time restrictions for public comment. Specifically, it is not uncommon for a permit modification or amendment notification to be delayed on occasion, which results in a shorter period for citizens as well as HCPHES to respond. These situations have unduly limited the opportunities for the public and affected agencies to be able to provide meaningful reviews and submit appropriate comments. The commenter supports EPA's conclusion to disapprove portions of the SIP as proposed until such time as TCEQ addresses all of the specifics noted in the **Federal Register.** In addition, HCPHES strongly supports strengthening public participation rules such that Texas citizens are able to participate meaningfully in the process.

Comment: Several members of the Texas House commented that while the Qualified Facilities Program was a legislative creation, these members of the Texas House recognize that the statutory language and associated regulations are inconsistent with current CAA requirements regarding modifications and public participation. A particular concern is inadequate public participation.

Comment: HCPHES strongly supports strengthening public participation rules such that Texas citizens are able to participate meaningfully in the process.

Response: General comments on Texas's public participation requirements are outside the scope of this rulemaking. However, in a separate action, EPA has proposed a limited approval/limited disapproval of Texas's SIP submittal for public participation (73 FR 72001 (Nov. 26, 2008)). In addition, TCEQ has proposed revisions to these rules and EPA is working with TCEQ to strengthen its rules for public participation to ensure the State's rules comply with all Federal requirements.

2. Comments Generally Opposing Proposal

Comment: The UT Environmental Clinic commented that the Qualified Facilities Rules allow industrial plants to make changes that can affect neighboring residents with absolutely no notice or opportunity for participation. These rules allow modifications without meeting the Federal public participation requirements that are applicable to Nonattainment NSR and PSD permits under the Act, 40 CFR 51.161, and 40 CFR 51.166(q). TCEQ's Qualified Facilities guidance specifically states that the qualified facility notification process may be used instead of the alteration process to change permit special conditions. *Qualified Facilities Guidance*, at 14.

Response: EPA agrees with the commenter that the Qualified Facilities rules do not meet the Federal public participation requirements for each individual change, either for a Major or Minor NSR SIP revision. As discussed in more detail in Section V.D.1 above, the Program does not clearly require a permit for each change. Therefore, the Program does not provide an opportunity for public review, which circumvents public participation requirements in 40 CFR 51.161. *See* 74 FR 48450, at 48459–48460.

Comment: The UT Environmental Clinic comments that the Texas rules also allow sources to amend terms and conditions of a Major NSR or Minor NSR permit without public participation. EPA has already expressed concerns to Texas about using methods other than permit amendment for making changes to individual NSR permits. Letter to Dan Eden, TCEQ, Deputy Director, from Carl Edlund, EPA, Region 6, Director, Multimedia Planning and Permitting Division (March 12, 2008), p. 8. Letter to Richard Hyde, TCEQ, Director Air Permits Division from Jeff Robinson, EPA, Chief, Air Permits Section (May 21, 2008), p. 6.

Response: The comments that TCEQ's rules allow sources to amend terms and conditions of a Major NSR or Minor NSR permit without public participation and the use of methods other than permit amendments are outside the scope of this rulemaking.

Comment: GCLC provided comments on Texas's public participation program because the public participation issues are implicated throughout the three **Federal Register** notices (Qualified Facilities, Flexible Permits, and NSR Reform). GCLC considers these comments timely and appropriate because EPA's proposal directs the public to read the three pending notices and the November 2008 public participation proposal "in conjunction" with each other.

Response: We recognize the need to read the notices in conjunction with each other because the permits issued under these State programs are the vehicles for regulating a significant universe of the air emissions from sources in Texas and thus directly impact the ability of the State to achieve and maintain attainment of the NAAQS and to protect the health of the communities where these sources are located. 74 FR 48450, at 48453. However, this final rulemaking only addresses the Qualified Facilities Program. Therefore, specific issues related to the public participation submittal package are outside the scope of this rulemaking.

Comment: The ERCC commented that public review requirements have been met because the implementing regulations for Qualified Facilities were subject to notice and comment. Proposed on 20 Tex. Reg. 8308 (October 10, 1995) finalized on 21 Tex. Reg. 1569 (February 27, 1996).

Response: EPA agrees with the commenter that the Qualified Facilities rules met the public participation requirements for SIP revision submittals. EPA, however, disagrees with the commenter that the permit application public participation requirements of this submitted Qualified Facilities program meets the NSR public participation requirements for individual permit applications. Where the adopted State rules fail to provide for the minimum public participation required under Federal law for individual permit applications,

Federal public participation requirements cannot be considered met just because the deficient State rules were adopted after public notice and comment. Please see our comments above.

VI. Final Action

EPA is disapproving revisions to the SIP submitted by the State of Texas that relate to the Modification of Qualified Facilities, identified in the Table in section III.B of this action. These affected provisions include the following regulations under Chapter 116: 30 TAC 116.116(e), 30 TAC 116.117, 30 TAC 116.118, and the following definitions under 30 TAC 116.10—General Definitions: 30 TAC 116.10(1)—definition of "actual emissions," 30 TAC 116.10(2)—definition of "allowable emissions," 30 TAC 116.10(11)(E) under the definition of "modification of existing facility," and 30 TAC 116.10(16)—definition of "qualified facility." EPA finds that these submitted provisions and definitions in the submitted Texas Qualified Facilities Program are not severable from each other.

EPA is disapproving the submitted Texas Qualified Facilities Program as a substitute Major NSR SIP revision because it does not meet the Act and EPA's regulations. We are also disapproving the submitted Qualified Facilities Program as a Minor NSR SIP revision because it does not meet the Act and EPA's regulations.

The Qualified Facilities Program submittals do not meet the requirements for a substitute Major NSR SIP revisions because (1) the Program does not prevent circumvention of Major NSR; (2) the State failed to submit information sufficient to demonstrate that the Program's regulatory text requires an evaluation of Major NSR applicability before a change is exempted from permitting; (3) the Program is deficient for Major NSR netting because (a) it authorizes the use of allowable, rather than actual emissions, to be used as a baseline to determine applicability. This use of allowables violates the Act and Major NSR SIP requirements and is contrary to *New York* v. *EPA*, 413 F.3d 3, 38–40 (DC Cir. 2005) ("New York I") and (b) it could allow an emission increase to net out by taking into account emission decreases outside of the major stationary source and, in other circumstances, allow an evaluation of emissions of a subset of units at a major stationary source; and (4) there is not sufficient available information to enable EPA to make a determination that the requested SIP revision relaxation would not interfere with any applicable requirements concerning attainment, RFP, or any other applicable CAA requirement, as required by section 110(l).

The Qualified Facilities Program submittals do not meet the requirements for a Minor NSR SIP revision. The submitted Program (1) fails to ensure that the Major NSR SIP requirements continue to be met; (2) is not limited only to Minor NSR; (3) fails to include sufficient legally enforceable safeguards to ensure that the NAAQS and control strategies are protected; (4) the State failed to demonstrate that the Program's exemption from the Texas Minor NSR SIP includes legally enforceable procedures to ensure that the State will not permit a source that will violate the NAAQS or the State's control strategies, (5) the submitted Program does not provide clear and enforceable requirements for a basic Minor NSR netting program; and (6) EPA lacks sufficient information to make a determination that the requested SIP revision relaxation does not interfere with any applicable requirements concerning attainment and RFP, or any other applicable requirement of the Act, as required by section 110(l). Therefore, we are disapproving the submitted Qualified Facilities Program as a Minor NSR SIP revision because it does not meet sections 110(a)(2)(C) and 110(l) of the Act and 40 CFR 51.160.

EPA is approving the submitted definitions for "grandfathered facility," "maximum allowable emissions rate table (MAERT)," and "new facility." Finally, EPA is finalizing an administrative correction in today's action by specifically correcting a typographical error at 72 FR 49198 to clarify that the definition of "facility" as codified at 30 TAC 116.10(6) was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This final action has been determined not to be a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b). Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the States are already imposing.

Furthermore, as explained in this action, the submissions do not meet the requirements of the Act and EPA cannot approve the submissions. The final disapproval will not affect any existing State requirements applicable to small entities in the State of Texas. Federal disapproval of a State submittal does not affect its State enforceability. After considering the economic impacts of today's rulemaking on small entities, and because the Federal SIP disapproval does not create any new requirements or impact a substantial number of small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such

grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 7410(a)(2).

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 "for State, local, or tribal governments or the private sector." EPA has determined that the disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action determines that pre-existing requirements under State or local law should not be approved as part of the Federally approved SIP. It imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP EPA is disapproving would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 14, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 31, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7410 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA-Approved Regulations in the Texas SIP" is amended by revising the entry for section 116.10 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A—Definitions				
Section 116.10	General Definitions	8/21/2002	4/14/2010 [Insert FR page number where document begins].	The SIP does not include paragraphs (1), (2), (3), (7)(F), (11), and (16).
*	*	*	*	*

■ 3. Section 52.2273 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 52.2273 Approval status.

* * * * *

(b) EPA is disapproving the Texas SIP revision submittals as follows:

(1) The following definitions in 30 TAC 116.10—General Definitions:

(i) Definition of "actual emissions" in 30 TAC 116.10(1), submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998;

(ii) Definition of "allowable emissions" in 30 TAC 116.10(2), submitted March 13, 1996; repealed and re-adopted June 17, 1998 and submitted July 22, 1998; and submitted September 11, 2000;

(iii) Portion of the definition of "modification of existing facility" in 30 TAC 116.10(11)(E), submitted March 13, 1996; repealed and re-adopted June 17, 1998 and submitted July 22, 1998; and submitted September 4, 2002; and

(iv) Definition of "qualified facility" in 30 TAC 116.10(16), submitted March 13, 1996; repealed and re-adopted June 17, 1998 and submitted July 22, 1998; and submitted September 4, 2002;

(2) 30 TAC 116.116(e)—Changes at Qualified Facilities—submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998;

(3) 30 TAC 116.117—Documentation and Notification of Changes to Qualified Facilities—submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998;

(4) 30 TAC 116.118—Pre-Change Qualification—submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998.

[FR Doc. 2010–8019 Filed 4–13–10; 8:45 am]

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FIFTH CIRCUIT
OFFICE OF THE CLERK

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CLERK

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NEW ORLEANS, LA 70130

June 14, 2010

Mr. Scott Fulton
Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Ariel Rios North Building
Washington, DC 20460

Ms. Carrie Thomas
US Environmental Protection Agency
Region 6
1445 Ross Avenue
Suite 1200
Dallas, TX 75202-2773

No. 10-60459, Texas Oil & Gas Association, et al v. EPA
Agency No. 75 Fed. Reg. 19,468-19,493

You are served with the following document(s) under Fed. R. App. P.15:

Petition for Review filed by State of Texas

See Fed. R. App. P.16 and 17 as to the composition and time for the filing of the record.

Counsel who desire to appear in this case must sign and return a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see Fed. R. App. P.and 5th Cir. R.12. You may print or download the form from the Fifth Circuit's web site, www.ca5.uscourts.gov. If you fail to send in the form, we will remove your name from our docket. Also, we cannot release official records on appeal unless an appearance has been entered.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Nancy F. Dolly, Deputy Clerk
504-310-7683

Enclosures

cc w/encl:
Mr. Van Beckwith
Mr. John Reed Clay Jr.
Mrs. Claudia Wilson Frost

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF TEXAS,
Rick Perry, Governor of Texas
Greg Abbott, Attorney General of Texas
Texas Commission on Environmental Quality
Texas Agriculture Commission
Barry Smitherman, Chairman of the Texas Public Utility Commission

Petitioners

V.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent

10-1041

Case No.

PETITION FOR REVIEW

Pursuant to section 307 of the Clean Air Act, 42 U.S.C. § 7607(b)(1), and sections 702 and 704 of the Administrative Procedure Act, 5 **U.S.C.** §§ 702 and 704, the State of Texas et al. file this Petition for Review. The State of Texas et al. seek review of the final action of the United States Environmental Protection Agency (the "EPA") published in the Federal Register at 74 Fed. Reg. 66,496 et seq. (Dec. 15, 2009) and titled "Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean **Air** Act, Final Rule." Today, the State of Texas et al are also filing a

Petition for Reconsideration with the EPA, Docket Number EPA-HQ-OAR-2009-0171.

A copy of the Petition for Reconsideration is attached hereto.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas
FILING BY PERMISSION
Post Office Box 12548
Austin, Texas 78711-2548
(512) 463-2191 (Telephone)
(512) 936-0545 (Facsimile)
ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that on February 16, 2010, I served the foregoing Petition for Review on Respondent by certified mail and hand delivery in accordance with the Federal Rules of Appellate Procedure and the Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit.

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APPENDIX B

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510–6175

July 14, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Recent Clean Air Act Activities by Region 6

Dear Administrator Jackson:

I have been made aware of a number of actions initiated by the Region 6 Administrator, Dr. Al Armendariz, which have alarmed state and local officials and regulated entities. These actions, discussed below, seem to contradict the relationship between the EPA and state and local agencies developed over forty years pursuant to the Clean Air Act. Further, I am concerned about the costs and impacts of various actions on regulated businesses and their employees. I have not been made aware of any information that these actions would further in any meaningful way the primary goal of the Clean Air Act, improving air quality. I request that you indicate whether you support these actions and if they are part of any national initiative or policy.

On May 10, 2010, Dr. Armendariz convened a meeting at EPA Region VI Dallas Headquarters. Participating in the meeting were state environmental and natural resource regulatory authorities, representatives of the oil and gas industries, and representatives from industry trade associations. I will not detail the many statements or conclusions offered by EPA Region VI staff and Dr. Amendariz with which the invited participants disagree or question, but instead, I will focus on the request by Dr. Armendariz for a region-wide speciated inventory of VOC and NOx air pollutants for the purported purpose of preparing for the impending ozone NAAQS.

1. In asking for a speciated inventory, which will be costly, is EPA contemplating providing credit for the reactivity of various pollutants in the formation of ozone? Otherwise what is the purpose?
2. The request was made on a region-wide basis but only included the States of Texas, Oklahoma, Arkansas, and Louisiana. Why was New Mexico excluded?
3. The inventory was requested on a county-by-county basis to be gathered by the relevant trade associations from their oil and gas industry exploration and production members as

a voluntary undertaking ignoring traditional state involvement. Should the industry decline to participate, Dr. Armendariz threatened to issue Clean Air Act Section 114 requests. Such threats do not make the request a voluntary effort. Further, since the revised Ozone NAAQS has not been made final and work on the 2008 Ozone NAAQS has essentially been halted by EPA, non-attainment areas for the new NAAQS have not been designated and the EPA Rule on how to implement the New NAAQS, the Implementation Rule, has not been made final, it would seem unreasonable to issue a 114 request for the requested information. Do you believe that a 114 request is reasonable at this time?

4. Since more than 9 companies will be required to supply information, I request that you supply to me the Paperwork Reduction Act documents indicating clearance by OMB for this request.
5. What is the basis for only requesting information from the oil and gas production and exploration industry?
6. The focus of the information appears to be on areas with shale production and exploration? Is there a national effort to examine air emissions from shale gas operations?
7. Dr. Armendariz requested well site equipment counts and a company level forecast of production and drilling schedules for the next ten years. I would like to know the purpose of this request with regard to an as yet final ozone NAAQS.
8. Producing this information will be redundant and an unnecessary cost as the sources will be required to submit formal information as part of the SIP development process conducted by the States once a new ozone NAAQS has been promulgated. Do you agree with this assessment?
9. I would like an explanation as to the purpose of excluding the state and local regulatory authorities. In addition, I seek your commitment to follow the requirements of the Clean Air Act's federal-state partnership in addressing air quality issues – a partnership which has been successfully implemented and developed over 40 years.

In addition to these issues, I am aware that Dr. Armendariz has threatened to federalize the Texas air permitting program on the grounds that the Texas air program is deficient. Please provide any documents describing the nature of these threats and EPA discussions with Texas authorities on the nature of the deficiencies and consequences of the failure to correct such deficiencies.

It has also been reported that Region VI is in the process of hiring at least 8 engineers or other staff specialties to operate the Texas program. What is the source of funds for this hiring? Do the positions reduce staff levels in other EPA or Region VI programs?

Finally, Oklahoma Gas and Electric Company (OG&E) recently made a proposal for an alternative visibility SIP. The proposal would avoid the costly installation of Sulfur dioxide control equipment (scrubbers) by replacing coal with natural gas. Dr. Armendariz has been

quoted (informally) as stating that he would deny the OG&E SIP proposal. The substitution of gas for coal is a cost-effective alternative to installing expensive scrubber technology. I would like to know the current status of the proposal and to be kept informed of any pending or final action by EPA or Region VI on the OG&E proposal.

Should you have any questions please do not hesitate to contact Ryan Jackson at 202-224-0152 or George Sugiyama at 202-224-0146.

Sincerely,

JAMES M. INHOFE
Ranking Member

Cc: Dr. Al Armendariz
Regional Administrator
Environmental Protection Agency
Fountain Place 12th Floor, Suite 1200
1445 Ross Avenue
Dallas, TX 75202-2733

APPENDIX C

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** March 11, 2010

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Richard A. Hyde, P.E., Deputy Director
Office of Permitting and Registration

Docket No.: 2009-1775-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 7, Memoranda of Understanding
Memorandum of Understanding Between the TCEQ and the Railroad Commission of Texas
Rule Project No. 2009-055-007-PR

Background and reason(s) for the rulemaking:
The proposed rulemaking would bring the Memoranda of Understanding (MOU) between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) into a current status including the provision of Senate Bill (SB) 1387, 81st Legislature, 2009, requiring an MOU between the TCEQ and the RRC to identify the different jurisdictions each agency has for carbon dioxide sequestration. The MOU was last updated in May, 1998, and since that time, statutory changes and several agency reorganizations have occurred requiring the MOU to be revised.

The proposed rulemaking will occur in both the TCEQ rules by reference, as well as the RRC rules. The specific MOU provisions are currently in RRC rules found in 16 TAC Chapter 3, Oil and Gas Division, with the corresponding TCEQ rules found in 30 TAC Chapter 7, Memoranda of Understanding, which incorporates by reference RRC rules in 16 TAC Chapter 3. RRC is the lead on the actual rule language of the MOU. The RRC will be conducting a concurrent rulemaking with the TCEQ for proposal and adoption. The TCEQ will not hold a stakeholder meeting or public hearing, but will participate in the public hearing held by the RRC on May 11, 2010.

Scope of the proposed rulemaking:
A) Summary of what the rulemaking will do:
The proposed rulemaking would bring the MOU between the RRC and the TCEQ into a current status including two SBs passed in the 80th Legislature, 2007, and the 81st Legislature, 2009: SB 1604 and SB 1387, respectively.

The rule will adopt by reference in §7.117, the rules being adopted by the RRC, 16 TAC §3.30, Memorandum of Understanding between the Railroad Commission of Texas and the Texas Natural Resource Conservation Commission (TNRCC), which is being updated to replace TNRCC with Texas Commission on Environmental Quality. The proposed rules will clearly identify the division of jurisdiction between the two agencies over waste materials associated with the exploration for and the development, production, and refining of oil and gas. Additionally, the rulemaking will identify the jurisdiction of new waste generating activities, such as recycling and sewage. The MOU will also address agency responsibilities with respect to the regulation of radioactive materials, injection wells, and emergency and spill response. The MOU also expresses the agencies' agreement to cooperate in areas of jurisdictional overlap, such as information sharing, reporting, emergency response, enforcement support, and the providing of recommendations on permit applications when required by statute.

The MOU will also implement the provision of SB 1387 requiring the creation of an MOU between the TCEQ and RRC to identify the different jurisdictions each agency has for carbon dioxide sequestration. SB 1387 gives the option to either amend the existing MOU or enter into a new MOU, and the agencies recommend including this provision in the current MOU, as opposed to creating a separate MOU for carbon dioxide sequestration.

B) Scope required by federal regulations or state statutes:
The proposed rules are required by state statutes. SB 1604 passed in the 80th Legislature, 2007, and SB 1387 passed in the 81st Legislature, 2009.

C) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:

- Texas Water Code, §5.104 and Texas Health and Safety Code, §361.016, which requires the TCEQ to adopt by rule any MOU or a revision to an MOU.
- Texas Water Code, §5.105 - General Policy
- Texas Water Code, §26.011 – In General
- Texas Water Code, §27.019 – Rules, Etc.
- Texas Health and Safety Code, §361.016 - Memorandum of Understanding by Commission
- Texas Health and Safety Code, §401.069 - Memorandum of Understanding

Effect on the:
A) Regulated community:
The regulated community will have more clarity on jurisdiction of which agency regulates their specific activity. It will not impose any additional requirement or have a fiscal impact, but it will clearly delineate the regulatory authority of each agency.

B) Public:
This amendment affects oil, gas, carbon dioxide sequestration, recycling activities and related waste generators, and disposal/treatment facilities that might accept such wastes. The MOU also addresses agency responsibilities for injection wells, emergency and spill response, and radioactive materials, including the regulation of oil and gas naturally occurring radioactive materials and uranium exploration and mining activities. The public will have a better understanding of which agency to contact with their questions on specific issues.

C) Agency programs:
There are no significant fiscal implications for state or local governments. The following agency programs are involved in the MOU revision: Radioactive Materials Division, Waste Permits Division (Industrial Hazardous Waste, Municipal Solid Waste, and Surface Casing), Water Quality Division, Water Supply Division, Permitting and Registration Support Division, Office of Compliance and Enforcement, and Small Business.

Stakeholder meetings:
No stakeholder meetings are planned.

Potential controversial concerns and legislative interest:
There are no potential controversial concerns with the proposed rulemaking.

Re: Docket No. 2009-1775-RUL

Will this rulemaking affect any current policies or require development of new policies?
No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
If the rulemaking is not completed, the current MOU would still be active and in place. However, the current MOU is out of date and does not include statutory changes affecting jurisdiction for each agency. Both the TCEQ and the RRC would not meet the statutory requirement in SB 1387 to have an MOU in place, nor would the agencies meet the requirement in SB 1604, which requires an MOU. The breadth of issues for the TCEQ and the RRC has expanded since the last update to the MOU and needs to be addressed.

Key dates in the proposed rulemaking schedule:

Anticipated proposal date:	March 30, 2010
Anticipated *Texas Register* publication date:	April 16, 2010
Public hearing date (if any):	None at the TCEQ; the RRC will hold a public hearing May 11, 2010 in which the TCEQ will participate.
Public comment period:	April 16, 2010 through May 17, 2010
Anticipated adoption date:	September, 2010

Agency contacts:
Cari-Michel La Caille, Rule Project Manager, 239-6479, Waste Permits Division
Diane Goss, Staff Attorney, 239-5731
Don Redmond, Staff Attorney, 239-0612
Devon Ryan, Texas Register Coordinator, 239-6090

Attachments
SB 1387

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Kevin Patteson
Curtis Seaton
Daniel Womack
Office of General Counsel
Susan M. Jablonski, P.E.
Kathryn Flegal
Devon Ryan

APPENDIX D

SUBCHAPTER O: OIL AND GAS
§§106.351 - 106.355
Effective November 1, 2001

§106.351. Salt Water Disposal (Petroleum).

Salt water disposal facilities used to handle aqueous liquid wastes from petroleum production operations and water injection facilities are permitted by rule, provided that the following conditions of this section are met.

(1) Any facility processing salt water which emits a sour gas shall be located at least 1/4 mile from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facility or the owner of the property upon which the facility is located.

(2) Any open storage of salt water shall be operated in such a manner as to prevent the occurrence of a nuisance condition off-property.

(3) All plant roads and truck loading and unloading areas must be operated and/or maintained as necessary to prevent dust emissions from the property which would cause or contribute to a nuisance condition. Appropriate operating activities may include reduction of speed of vehicles, use of alternate routes, and covering of dust-producing loads being hauled. Appropriate maintenance activities may include watering, treatment with dust suppressant chemicals, oiling, paving, and cleaning dust-producing surfaces.

(4) Before construction of the facility begins under this section, registration of the permit by rule shall be submitted to the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7, unless one of the following exceptions applies:

(A) all delivery of salt water to the site takes place through enclosed hoses or lines, and all storage and handling of salt water takes place in enclosed conduits, vessels, and storage, so that the salt water is not exposed to the atmosphere; or

(B) delivery of salt water from outside a site to all facilities at a site in any calendar day does not exceed 540,000 gallons.

Adopted August 9, 2000 Effective September 4, 2000

§106.352. Oil and Gas Production Facilities.

Any oil or gas production facility, carbon dioxide separation facility, or oil or gas pipeline facility consisting of one or more tanks, separators, dehydration units, free water knockouts, gunbarrels, heater treaters, natural gas liquids recovery units, or gas sweetening and other gas conditioning facilities, including sulfur recovery units at facilities conditioning produced gas containing less than two long tons per day of sulfur compounds as sulfur are permitted by rule, provided that the

following conditions of this section are met. This section applies only to those facilities named which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids found in geologic formations beneath the earth's surface.

(1) Compressors and flares shall meet the requirements of §106.512 and §106.492 of this title (relating to Stationary Engines and Turbines, and Flares).

(2) Total emissions, including process fugitives, combustion unit stacks, separator, or other process vents, tank vents, and loading emissions from all such facilities constructed at a site under this section shall not exceed 25 tons per year (tpy) each of sulfur dioxide (SO_2), all other sulfur compounds combined, or all volatile organic compounds (VOC) combined; and 250 tpy each of nitrogen oxide and carbon monoxide. Emissions of VOC and sulfur compounds other than SO_2 must include gas lost by equilibrium flash as well as gas lost by conventional evaporation.

(3) Any facility handling sour gas shall be located at least 1/4 mile from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facility or the owner of the property upon which the facility is located.

(4) Total emissions of sulfur compounds, excluding sulfur oxides, from all vents shall not exceed 4.0 pounds per hour (lb/hr) and the height of each vent emitting sulfur compounds shall meet the following requirements, except in no case shall the height be less than 20 feet:

Total as Hydrogen Sulfide, lb/hr	**Minimum vent height, feet**
0.27	20
0.60	30
1.94	50
3.00	60
4.00	68

NOTE: Other values may be interpolated.

(5) Before operation begins, facilities handling sour gas shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7 along with supporting documentation that all requirements of this section will be met. For facilities constructed under §106.353 of this title (relating to Temporary Oil and Gas Facilities), the registration is required before operation under this section can begin. If the facilities cannot meet this section, a permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) is required prior to continuing operation of the facilities.

Adopted August 9, 2000 Effective September 4, 2000

§106.353. Temporary Oil and Gas Facilities.

SUBCHAPTER W: TURBINES AND ENGINES
§106.511, §106.512
Effective June 13, 2001

§106.511. Portable and Emergency Engines and Turbines.

Internal combustion engine and gas turbine driven compressors, electric generator sets, and water pumps, used only for portable, emergency, and/or standby services are permitted by rule, provided that the maximum annual operating hours shall not exceed 10% of the normal annual operating schedule of the primary equipment; and all electric motors. For purposes of this section, "standby" means to be used as a "substitute for" and not "in addition to" other equipment.

Adopted August 9, 2000 Effective September 4, 2000

§106.512. Stationary Engines and Turbines.

Gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that operate in compliance with the following conditions of this section are permitted by rule.

(1) The facility shall be registered by submitting the commission's Form PI-7, Table 29 for each proposed reciprocating engine, and Table 31 for each proposed gas turbine to the commission's Office of Permitting, Remediation, and Registration in Austin within ten days after construction begins. Engines and turbines rated less than 240 horsepower (hp) need not be registered, but must meet paragraphs (5) and (6) of this section, relating to fuel and protection of air quality. Engine hp rating shall be based on the engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed. A rich-burn engine is a gas-fired spark-ignited engine that is operated with an exhaust oxygen content less than 4.0% by volume. A lean-burn engine is a gas-fired spark-ignited engine that is operated with an exhaust oxygen content of 4.0% by volume, or greater.

(2) For any engine rated 500 hp or greater, subparagraphs (A) - (C) of this paragraph shall apply.

(A) The emissions of nitrogen oxides (NO_x) shall not exceed the following limits:

(i) 2.0 grams per horsepower-hour (g/hp-hr) under all operating conditions for any gas-fired rich-burn engine;

(ii) 2.0 g/hp-hr at manufacturer's rated full load and speed, and other operating conditions, except 5.0 g/hp-hr under reduced speed, 80-100% of full torque conditions, for any spark-ignited, gas-fired lean-burn engine, or any compression-ignited dual fuel-fired engine manufactured new after June 18, 1992;

(iii) 5.0 g/hp-hr under all operating conditions for any spark-ignited, gas-fired, lean-burn two-cycle or four-cycle engine or any compression-ignited dual fuel-fired engine rated 825 hp or greater and manufactured after September 23, 1982, but prior to June 18, 1992;

(iv) 5.0 g/hp-hr at manufacturer's rated full load and speed and other operating conditions, except 8.0 g/hp-hr under reduced speed, 80-100% of full torque conditions for any spark-ignited, gas-fired, lean-burn four-cycle engine, or any compression-ignited dual fuel-fired engine that:

(I) was manufactured prior to June 18, 1992, and is rated less than 825 hp; or

(II) was manufactured prior to September 23, 1982;

(v) 8.0 g/hp-hr under all operating conditions for any spark-ignited, gas-fired, two-cycle lean-burn engine that:

(I) was manufactured prior to June 18, 1992, and is rated less than 825 hp; or

(II) was manufactured prior to September 23, 1982;

(vi) 11.0 g/hp-hr for any compression-ignited liquid-fired engine.

(B) For such engines which are spark-ignited gas-fired or compression-ignited dual fuel-fired, the engine shall be equipped as necessary with an automatic air-fuel ratio (AFR) controller which maintains AFR in the range required to meet the emission limits of subparagraph (A) of this paragraph. An AFR controller shall be deemed necessary for any engine controlled with a non-selective catalytic reduction (NSCR) converter and for applications where the fuel heating value varies more than ± 50 British thermal unit/standard cubic feet from the design lower heating value of the fuel. If an NSCR converter is used to reduce NO_x, the automatic controller shall operate on exhaust oxygen control.

(C) Records shall be created and maintained by the owner or operator for a period of at least two years, made available, upon request, to the commission and any local air pollution control agency having jurisdiction, and shall include the following:

(i) documentation for each AFR controller, manufacturer's, or supplier's recommended maintenance that has been performed, including replacement of the oxygen sensor as necessary for oxygen sensor-based controllers. The oxygen sensor shall be replaced at least quarterly in the absence of a specific written recommendation;

(ii) documentation on proper operation of the engine by recorded measurements of NO_x and carbon monoxide (CO) emissions as soon as practicable, but no later than seven days following each occurrence of engine maintenance which may reasonably be expected to increase emissions, changes of fuel quality in engines without oxygen sensor-based AFR controllers which may reasonably be expected to increase emissions, oxygen sensor replacement, or catalyst cleaning or catalyst replacement. Stain tube indicators specifically designed to measure NO_x and CO concentrations shall be acceptable for this documentation, provided a hot air probe or equivalent device is used to prevent error due to high stack temperature, and three sets of concentration measurements are made and averaged. Portable NO_x and CO analyzers shall also be acceptable for this documentation;

(iii) documentation within 60 days following initial engine start-up and biennially thereafter, for emissions of NO_x and CO, measured in accordance with United States Environmental Protection Agency (EPA) Reference Method 7E or 20 for NO_x and Method 10 for CO. Exhaust flow rate may be determined from measured fuel flow rate and EPA Method 19. California Air Resources Board Method A-100 (adopted June 29, 1983) is an acceptable alternate to EPA test methods. Modifications to these methods will be subject to the prior approval of the Source and Mobile Monitoring Division of the commission. Emissions shall be measured and recorded in the as-found operating condition; however, compliance determinations shall not be established during start-up, shutdown, or under breakdown conditions. An owner or operator may submit to the appropriate regional office a report of a valid emissions test performed in Texas, on the same engine, conducted no more than 12 months prior to the most recent start of construction date, in lieu of performing an emissions test within 60 days following engine start-up at the new site. Any such engine shall be sampled no less frequently than biennially (or every 15,000 hours of elapsed run time, as recorded by an elapsed run time meter) and upon request of the executive director. Following the initial compliance test, in lieu of performing stack sampling on a biennial calendar basis, an owner or operator may elect to install and operate an elapsed operating time meter and shall test the engine within 15,000 hours of engine operation after the previous emission test. The owner or operator who elects to test on an operating hour schedule shall submit in writing, to the appropriate regional office, biennially after initial sampling, documentation of the actual recorded hours of engine operation since the previous emission test, and an estimate of the date of the next required sampling.

(3) For any gas turbine rated 500 hp or more, subparagraphs (A) and (B) of this paragraph shall apply.

(A) The emissions of NO_x shall not exceed 3.0 g/hp-hr for gas-firing.

(B) The turbine shall meet all applicable NO_x and sulfur dioxide (SO_2) (or fuel sulfur) emissions limitations, monitoring requirements, and reporting requirements of EPA New Source Performance Standards Subpart GG--Standards of Performance for Stationary Gas Turbines. Turbine hp rating shall be based on turbine base load, fuel lower heating value, and International Standards Organization Standard Day Conditions of 59 degrees Fahrenheit, 1.0 atmosphere and 60% relative humidity.

(4) Any engine or turbine rated less than 500 hp or used for temporary replacement purposes shall be exempt from the emission limitations of paragraphs (2) and (3) of this section. Temporary replacement engines or turbines shall be limited to a maximum of 90 days of operation after which they shall be removed or rendered physically inoperable.

(5) Gas fuel shall be limited to: sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains total sulfur per 100 dry standard cubic feet, or field gas. If field gas contains more than 1.5 grains hydrogen sulfide or 30 grains total sulfur compounds per 100 standard cubic feet (sour gas), the engine owner or operator shall maintain records, including at least quarterly measurements of fuel hydrogen sulfide and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed 25 tons per year (tpy). Liquid fuel shall be petroleum distillate oil that is not a blend containing waste oils or solvents and contains less than 0.3% by weight sulfur.

(6) There will be no violations of any National Ambient Air Quality Standard (NAAQS) in the area of the proposed facility. Compliance with this condition shall be demonstrated by one of the following three methods:

(A) ambient sampling or dispersion modeling accomplished pursuant to guidance obtained from the executive director. Unless otherwise documented by actual test data, the following nitrogen dioxide (NO_2)/NO_x ratios shall be used for modeling NO_2 NAAQS;

Device	NO_x Emission Rate (Q) g/hp-hr	NO_2/NO_x Ratio
IC Engine	Less than 2.0	0.4
IC Engine	2.0 thru 10.0	0.15 +(0.5/Q)
IC Engine	Greater than 10.0	0.2
Turbines		0.25
IC Engine with catalytic converter		0.85

(B) all existing and proposed engine and turbine exhausts are released to the atmosphere at a height at least twice the height of any surrounding obstructions to wind flow. Buildings, open-sided roofs, tanks, separators, heaters, covers, and any other type of structure are considered as obstructions to wind flow if the distance from the nearest point on the obstruction to the nearest exhaust stack is less than five times the lesser of the height, Hb, and the width, Wb, where:

Hb = maximum height of the obstruction, and
Wb = projected width of obstruction =

$$2\sqrt{\frac{lw}{3.141}}$$

where:

L = length of obstruction
W = width of obstruction

(C) the total emissions of NO_x (nitrogen oxide plus NO_2) from all existing and proposed facilities on the property do not exceed the most restrictive of the following:

(i) 250 tpy;

(ii) the value (0.3125 D) tpy, where D equals the shortest distance in feet from any existing or proposed stack to the nearest property line.

(7) Upon issuance of a standard permit for electric generating units, registrations under this section for engines or turbines used to generate electricity will no longer be accepted, except for:

(A) engines or turbines used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants;

(B) engines or turbines satisfying the conditions for facilities permitted by rule under Subchapter E of this title (relating to Aggregate and Pavement); or

(C) engines or turbines used exclusively to provide power to electric pumps used for irrigating crops.

and Registration in Austin a completed Form PI-7 and supporting documentation demonstrating that all of the requirements of this section will be met.

(7) Each permanent storage tank is located at least 1/4 mile from any recreational area or residence or other structure not occupied or used solely by the owner of the property upon which the facility is located.

Adopted August 9, 2000 Effective September 4, 2000

§106.478. Storage Tank and Change of Service.

Any fixed or floating roof storage tank, or change of service in any tank, used to store chemicals or mixtures of chemicals shown in Table 478 in paragraph (8) of this section is permitted by rule, provided that all of the following conditions of this section are met:

(1) The tank shall be located at least 500 feet away from any recreational area or residence or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.

(2) The true vapor pressure of the compound to be stored shall be less than 11.0 psia at the maximum storage temperature.

(3) For those compounds that have a true vapor pressure greater than 0.5 psia and less than 11.0 psia at the maximum storage temperature, any storage vessel larger than 40,000 gallons capacity shall be equipped with an internal floating cover or equivalent control.

(A) An open top tank containing an external floating roof using double seal technology shall be an approved control alternative equivalent to an internal floating cover tank, provided the primary seal consists of either a mechanical shoe seal or a liquid-mounted seal. Double seals having a vapor-mounted primary seal are an approved alternative for existing open top floating roof tanks undergoing a change of service.

(B) The floating cover or floating roof design shall incorporate sufficient flotation to conform to the requirements of American Petroleum Institute Code 650, Appendix C or an equivalent degree of flotation.

(4) Compounds with a true vapor pressure of 0.5 psia or less at the maximum storage temperature may be stored in a fixed roof or cone roof tank which includes a submerged fill pipe or utilizes bottom loading.

(5) For fixed or cone roof tanks having no internal floating cover, all uninsulated tank exterior surfaces exposed to the sun shall be painted chalk white except where a dark color is necessary to help the tank absorb or retain heat in order to maintain the material in the tank in a liquid state.

(6) Emissions shall be calculated by methods specified in Section 4.3 of the current edition of the United States Environmental Protection Agency Publication AP-42. This document may

be obtained from the Superintendent of Documents, Washington D.C. 20402. It is Stock Number 0550000251-7, Volume I.

(7) Before construction begins, storage tanks of 25,000 gallons or greater capacity and located in a designated nonattainment area for ozone shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7. The registration shall include a list of all tanks, calculated emissions for each carbon compound in tons per year for each tank, and a Table 7 of Form PI-2 for each different tank design.

(8) Mixtures of the chemicals listed in Table 478 which contain more than a total of 1.0% by volume of all other chemicals not listed in Table 478 are not covered by this section.

Table 478
Approved Chemical List for Exemption from Permitting

A. Compounds of the following classes containing only atoms of carbon and hydrogen, not including aromatic compounds:

Paraffins. Examples: hexane, pentane, octane, isooctane.

Cycloparaffins (except cyclopentane). Examples: cyclohexane, methyl cyclopentane.

Olefins (except butadiene). Examples: octene, isoprene.

Cycloolefins. Examples: cyclopentadiene, cyclohexene.

B. Aromatic hydrocarbons only as follows: Ethyl benzene, styrene, xylenes.

C. Compounds of the following classes containing only atoms of carbon, hydrogen, and oxygen:

Alcohols (except allyl alcohol, isobutyl alcohol, and propargyl alcohol). Examples of approved alcohols: butyl alcohol, ethylene glycol.

Ethers (except vinyl ethers, glycol ethers, epoxides, and other ringed oxide compounds such as ketenes, furans, and pyrans). Examples of approved ethers: butyl ether, isopropyl ether.

Esters (except acrylates, methacrylates, allyl acetate, vinyl acetate, isopropyl formate). Examples of approved esters: ethyl acetate, butyl formate, methyl propionate.

Ketones (except allyl acetone, methyl ethyl ketone, methyl normal butyl ketone, acetophenone, and vinyl ketones). Examples of approved ketones: acetone, hexanone.

D. Additional chemicals:

Crude oil and refinery petroleum fractions (except pyrolysis naphthas and pyrolysis gasolines) containing less than 10% benzene. Examples of approved petroleum fractions: intermediate and finished gasolines, naphthas, alkylates, fluid catalytic cracking unit feed, fuel oils, distillates, other liquid fuels, and condensates.

Natural gas and crude oil condensates that do not emit sour gas.

E. Non-approved chemicals:

Other chemicals not specifically included within the classes defined above are not approved. Examples of non-approved chemicals: aromatics (other than those listed or those found in the crude oil and refinery liquids as listed); aldehydes; amines; amides; imines; nitriles; halogenated compounds; sulfonated chemicals; cyanates; organic acids; ethylene oxide (EtO), propylene oxide, and other oxygenated compounds not listed; organometallic compounds; pesticides.

Adopted August 9, 2000 Effective September 4, 2000

SUBCHAPTER K: GENERAL
§§106.261 - 106.266
Effective November 1, 2003

§106.261. Facilities (Emission Limitations).

(a) Except as specified under subsection (b) of this section, facilities, or physical or operational changes to a facility, are permitted by rule provided that all of the following conditions of this section are satisfied.

(1) The facilities or changes shall be located at least 100 feet from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located.

(2) Total new or increased emissions, including fugitives, shall not exceed 6.0 pounds per hour (lb/hr) and ten tons per year of the following materials: acetylene, argon, butane, crude oil, refinery petroleum fractions (except for pyrolysis naphthas and pyrolysis gasoline) containing less than ten volume percent benzene, carbon monoxide, cyclohexane, cyclohexene, cyclopentane, ethyl acetate, ethanol, ethyl ether, ethylene, fluorocarbons Numbers 11, 12, 13, 14, 21, 22, 23, 113, 114, 115, and 116, helium, isohexane, isopropyl alcohol, methyl acetylene, methyl chloroform, methyl cyclohexane, neon, nonane, oxides of nitrogen, propane, propyl alcohol, propylene, propyl ether, sulfur dioxide, alumina, calcium carbonate, calcium silicate, cellulose fiber, cement dust, emery dust, glycerin mist, gypsum, iron oxide dust, kaolin, limestone, magnesite, marble, pentaerythritol, plaster of paris, silicon, silicon carbide, starch, sucrose, zinc stearate, or zinc oxide.

(3) Total new or increased emissions, including fugitives, shall not exceed 1.0 lb/hr of any chemical having a limit value (L) greater than 200 milligrams per cubic meter (mg/m^3) as listed and referenced in Table 262 of §106.262 of this title (relating to Facilities (Emission and Distance Limitations)) or of any other chemical not listed or referenced in Table 262. Emissions of a chemical with a limit value of less than 200 mg/m^3 are not allowed under this section.

(4) For physical changes or modifications to existing facilities, there shall be no changes to or additions of any air pollution abatement equipment.

(5) Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not exceed 5.0% opacity in any six-minute period.

(6) For emission increases of five tons per year or greater, notification must be provided using Form PI-7 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(7) For emission increases of less than five tons per year, notification must be provided using either:

(A) Form PI-7 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any; or

(B) Form PI-7 by March 31 of the following year summarizing all uses of this permit by rule in the previous calendar year. This annual notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(b) The following are not authorized under this section:

(1) construction of a facility authorized in another section of this chapter or for which a standard permit is in effect; and

(2) any change to any facility authorized under another section of this chapter or authorized under a standard permit.

Adopted October 8, 2003 Effective November 1, 2003

§106.262. Facilities (Emission and Distance Limitations).

(a) Facilities, or physical or operational changes to a facility, are permitted by rule provided that all of the following conditions of this section are satisfied.

(1) Emission points associated with the facilities or changes shall be located at least 100 feet from any off-plant receptor. Off-plant receptor means any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located.

(2) New or increased emissions, including fugitives, of chemicals shall not be emitted in a quantity greater than five tons per year nor in a quantity greater than E as determined using the equation E = L/K and the following table.

D, Feet	K
100	326
200	200
300	139
400	104
500	81
600	65
700	54
800	46
900	39
1,000	34
2,000	14
3,000 or more	8

E = maximum allowable hourly emission, and never to exceed 6 pounds per hour.

L = value as listed or referenced in Table 262

K = value from the table on this page. (interpolate intermediate values)

D = distance to the nearest off-plant receptor.

TABLE 262
LIMIT VALUES (L) FOR USE WITH EXEMPTIONS FROM PERMITTING §106.262

The values are not to be interpreted as acceptable health effects values relative to the issuance of any permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

Compound	Limit (L) Milligrams Per Cubic Meter
Acetone	590.
Acetaldehyde	9.
Acetone Cyanohydrin	4.
Acetonitrile	34.
Acetylene	2662.
N-Amyl Acetate	2.7
Sec-Amyl Acetate	1.1
Benzene	3.
Beryllium and Compounds	0.0005
Boron Trifluoride, as HF	0.5
Butyl Alcohol, –	76.
Butyl Acrylate	19.
Butyl Chromate	0.01
Butyl Glycidyl Ether	30.
Butyl Mercaptan	0.3
Butyraldehyde	1.4
Butyric Acid	1.8
Butyronitrile	22.
Carbon Tetrachloride	12.
Chloroform	10.
Chlorophenol	0.2
Chloroprene	3.6
Chromic Acid	0.01
Chromium Metal, Chromium II and III Compounds	0.1
Chromium VI Compounds	0.01
Coal Tar Pitch Volatiles	0.1
Creosote	0.1

Compound	Limit (L) Milligrams Per Cubic Meter
Cresol	0.5
Cumene	50.
Dicyclopentadiene	3.1
Diethylaminoethanol	5.5
Diisobutyl Ketone	63.9
Dimethyl Aniline	6.4
Dioxane	3.6
Dipropylamine	8.4
Ethyl Acrylate	0.5
Ethylene Dibromide	0.38
Ethylene Glycol	26.
Ethylene Glycol Dinitrate	0.1
Ethylidene-2-norbornene, 5-	7.
Ethyl Mercaptan	0.08
Ethyl Sulfide	1.6
Glycolonitrile	5.
Halothane	16
Heptane	350.
Hexanediamine, 1,6-	0.32
Hydrogen Chloride	1.
Hydrogen Fluoride	0.5
Hydrogen Sulfide	1.1
Isoamyl Acetate	133.
Isoamyl Alcohol	15.
Isobutyronitrile	22.
Kepone	0.001
Kerosene	100.
Malononitrile	8.
Mesityl Oxide	40.
Methyl Acrylate	5.8
Methyl Amyl Ketone	9.4
Methyl-t-butyl ether	45.

Compound	Limit (L) Milligrams Per Cubic Meter
Methyl Butyl Ketone	4.
Methyl Disulfide	2.2
Methylenebis (2-chloroaniline) (MOCA)	0.003
Methylene Chloride	26.
Methyl Isoamyl Ketone	5.6
Methyl Mercaptan	0.2
Methyl Methacrylate	34.
Methyl Propyl Ketone	530.
Methyl Sulfide	0.3
Mineral Spirits	350.
Naphtha	350.
Nickel, Inorganic Compounds	0.015
Nitroglycerine	0.1
Nitropropane	5.
Octane	350.
Parathion	0.05
Pentane	350.
Perchloroethylene	33.5
Petroleum Ether	350
Phenyl Mercaptan	0.4
Propionitrile	14.
Propyl Acetate	62.6
Propylene Oxide	20.
Propyl Mercaptan	0.23
Silica-amorphous- precipitated, silica gel	4.
Silicon Carbide	4.
Stoddard Solvent	350.
Styrene	21.
Succinonitrile	20.
Tolidine	0.02
Trichloroethylene	135.
Trimethylamine	0.1

Compound	Limit (L) Milligrams Per Cubic Meter
Valeric Acid	0.34
Vinyl Acetate	15.
Vinyl Chloride	2.

NOTE: The time weighted average (TWA) Threshold Limit Value (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH), in its TLVs and BEIs guide (1997 Edition) shall be used for compounds not included in the table. The Short Term Exposure Level (STEL) or Ceiling Limit (annotated with a "C") published by the ACGIH shall be used for compounds that do not have a published TWA TLV. This section cannot be used if the compound is not listed in the table or does not have a published TWA TLV, STEL, or Ceiling Limit in the ACGIH TLVs and BEIs guide.

(3) Notification must be provided using Form PI-7 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, and data identifying specific chemical names, L values, D values, and a description of pollution control equipment, if any.

(4) The facilities in which the following chemicals will be handled shall be located at least 300 feet from the nearest property line and 600 feet from any off-plant receptor and the cumulative amount of any of the following chemicals resulting from one or more authorizations under this section (but not including permit authorizations) shall not exceed 500 pounds on the plant property and all listed chemicals shall be handled only in unheated containers operated in compliance with the United States Department of Transportation regulations (49 Code of Federal Regulations, Parts 171-178): acrolein, allyl chloride, ammonia (anhydrous), arsine, boron trifluoride, bromine, carbon disulfide, chlorine, chlorine dioxide, chlorine trifluoride, chloroacetaldehyde, chloropicrin, chloroprene, diazomethane, diborane, diglycidyl ether, dimethylhydrazine, ethyleneimine, ethyl mercaptan, fluorine, formaldehyde (anhydrous), hydrogen bromide, hydrogen chloride, hydrogen cyanide, hydrogen fluoride, hydrogen selenide, hydrogen sulfide, ketene, methylamine, methyl bromide, methyl hydrazine, methyl isocyanate, methyl mercaptan, nickel carbonyl, nitric acid, nitric oxide, nitrogen dioxide, oxygen difluoride, ozone, pentaborane, perchloromethyl mercaptan, perchloryl fluoride, phosgene, phosphine, phosphorus trichloride, selenium hexafluoride, stibine, liquified sulfur dioxide, sulfur pentafluoride, and tellurium hexafluoride. Containers of these chemicals may not be vented or opened directly to the atmosphere at any time.

(5) For physical changes or modifications to existing facilities, there shall be no changes or additions of air pollution abatement equipment.

(6) Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not exceed 5.0% opacity in any six-minute period.

(b) The following are not authorized under this section except as noted in subsection (c) of this section:

(1) construction of a facility authorized in another section of this chapter or for which a standard permit is in effect; and

(2) any change to any facility authorized under another section of this chapter or authorized under a standard permit.

(c) If a facility has been authorized under another section of this chapter or under a standard permit, subsection (a)(2) and (3) of this section may be used to qualify the use of other chemicals at the facility.

Adopted October 8, 2003 Effective November 1, 2003

§106.263. Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities.

(a) This section authorizes routine maintenance, start-up and shutdown of facilities, and specific temporary maintenance facilities except as specified in subsection (b) of this section.

(b) The following are not authorized under this section:

(1) construction of any new or modified permanent facility;

(2) reconstruction under 40 Code of Federal Regulations, Part 60, New Source Performance Standards, Subpart A, §60.15 (relating to Reconstruction);

(3) physical or operational changes to a facility which increase capacity or production beyond previously existing performance levels or results in the emission of a new air contaminant;

(4) facilities and sources that are de minimis as allowed in §116.119 of this title (relating to De Minimis Facilities or Sources);

(5) piping fugitive emissions authorized under a permit or another permit by rule; and

(6) any emissions associated with operations claimed under the following sections of this chapter:

(A) §106.231 of this title (relating to Manufacturing, Refinishing, and Restoring Wood Products);

(B) §106.351 of this title (relating to Salt Water Disposal (Petroleum));

(C) §106.352 of this title (relating to Oil and Gas Production Facilities);

(D) §106.353 of this title (relating to Temporary Oil and Gas Facilities);

(E) §106.355 of this title (relating to Pipeline Metering, Purging, and Maintenance);

(F) §106.392 of this title (relating to Thermoset Resin Facilities);

(G) §106.418 of this title (relating to Printing Presses);

(H) §106.433 of this title (relating to Surface Coat Facility);

(I) §106.435 of this title (relating to Classic or Antique Automobile Restoration Facility);

(J) §106.436 of this title (relating to Auto Body Refinishing Facility); and

(K) §106.512 of this title (relating to Stationary Engines and Turbines).

(c) The following activities and facilities are authorized under this section:

(1) routine maintenance activities which are those that are planned and predictable and ensure the continuous normal operation of a facility or control device or return a facility or control device to normal operating conditions;

(2) routine start-ups and shutdowns which are those that are planned and predictable; and

(3) temporary maintenance facilities which are constructed in conjunction with maintenance activities. Temporary maintenance facilities include only the following:

(A) facilities used for abrasive blasting, surface preparation, and surface coating on immovable fixed structures;

(B) facilities used for testing and repair of engines and turbines;

(C) compressors, pumps, or engines and associated pipes, valves, flanges, and connections, not operating as a replacement for an existing authorized unit;

(D) flares, vapor combustors, catalytic oxidizers, thermal oxidizers, carbon adsorption units, and other control devices used to control vent gases released during the degassing of immovable, fixed process vessels, storage vessels, and associated piping to atmospheric pressure, plus cleaning apparatus that will have or cause emissions;

(E) temporary piping required to bypass a unit or pipeline section undergoing maintenance; and

(F) liquid or gas-fired vaporizers used for the purpose of vaporizing inert gas.

(d) Emissions from routine maintenance (excluding temporary maintenance facilities), start-up, and shutdown are:

(1) limited to 24-hour emission totals which are less than the reportable quantities defined in §101.1(82) of this title (relating to Definitions) for individual occurrences;

(2) required to be authorized under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or comply with §101.7 and §101.11 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements, and Demonstrations) if unable to comply with paragraph (1) of this subsection or subsection (f) of this section; and

(3) required to comply with subsection (f) of this section.

(e) In addition to the emission limits in subsection (f) of this section, specific temporary maintenance facilities as listed in subsection (c)(3) of this section must meet the following additional requirements:

(1) flares or vapor combustors must meet the requirements of §106.492(1) and (2)(C) of this title (relating to Flares);

(2) catalytic oxidizers must meet the requirements of §106.533(5)(C) of this title (relating to Water and Soil Remediation);

(3) thermal oxidizers must meet the requirements of §106.493(2) and (3) of this title (relating to Direct Flame Incinerators);

(4) carbon adsorption systems must meet the requirements of §106.533(5)(D) of this title;

(5) other control devices used to control vents caused by the degassing of process vessels, storage vessels, and associated piping must have an overall vapor collection and destruction or removal efficiency of at least 90%;

(6) any temporary maintenance facility that cannot meet all applicable limitations of this section must obtain authorization under Chapter 116 of this title; and

(7) temporary maintenance facilities may not operate at a given location for longer than 180 consecutive days or the completion of a single project unless the facility is registered. If a

single project requires more than 180 consecutive days to complete, the facilities must be registered using a PI-7 Form, along with documentation on the project. Registration and supporting documentation shall be submitted upon determining the length of the project will exceed 180 days, but no later than 180 days after the project begins.

(f) All emissions covered by this section are limited to, collectively and cumulatively, less than any applicable emission limit under §106.4(a)(1) - (3) of this title (relating to Requirements for Permitting by Rule) in any rolling 12-month period.

(g) Facility owners or operators must retain records containing sufficient information to demonstrate compliance with this section and must include information listed in paragraphs (1) - (4) of this subsection. Documentation must be separate and distinct from records maintained for any other air authorization. Records must identify the following for all maintenance, start-up, or shutdown activities and temporary maintenance facilities:

(1) the type and reason for the activity or facility construction;

(2) the processes and equipment involved;

(3) the date, time, and duration of the activity or facility operation; and

(4) the air contaminants and amounts which are emitted as a result of the activity or facility operation.

Adopted October 10, 2001 Effective November 1, 2001

§106.264. Replacements of Facilities.

A facility which replaces an existing facility is permitted by rule provided that the following conditions of this section are satisfied:

(1) the replacement facility functions in the same or similar manner as the facility to be replaced;

(2) the emissions from the replacement facility are not more than nor have different characteristics than those from the facility to be replaced;

(3) the emissions from the replacement facility will not exceed 25 tons per year of any air contaminant;

(4) the physical location of the replacement facility is the same or immediately adjacent to the facility being replaced;

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emissions of collateral pollutants, within the physical configuration and operational standards usually associated with the emissions control device, strategy, or technique.

(2) Recordkeeping. The owner or operator must maintain copies on site of monitoring or other emission records to prove that the pollution control project is operated consistent with the requirements in paragraph (1) of this subsection, and the conditions of this standard permit.

(f) Incorporation of the standard permit into the facility authorization.

(1) Any new facilities or changes in method of control or technique authorized by this standard permit instead of a permit amendment under §116.110 of this title (relating to Applicability) at a previously permitted or standard permitted facility must be incorporated into that facility's permit when the permit is amended or renewed.

(2) All increases in previously authorized emissions, new facilities, or changes in method of control or technique authorized by this standard permit for facilities previously authorized by a permit by rule must comply with §106.4 of this title (relating to Requirements for Permitting by Rule), except §106.4(a)(1) of this title, and §106.8 of this title (relating to Recordkeeping).

Adopted January 11, 2006 Effective February 1, 2006

§116.620. Installation and/or Modification of Oil and Gas Facilities.

(a) Emission specifications.

(1) Venting or flaring more than 0.3 long tons per day of total sulfur shall not be allowed.

(2) No facility shall be allowed to emit total uncontrolled emissions of sulfur compounds, except sulfur dioxide (SO_2), from all vents (excluding process fugitives emissions) equal to or greater than four pounds per hour unless the vapors are collected and routed to a flare.

(3) Any vent, excluding any safety relief valves that discharge to the atmosphere only as a result of fire or failure of utilities, emitting sulfur compounds other than SO_2 shall be at least 20 feet above ground level.

(4) New or modified internal combustion reciprocating engines or gas turbines permitted under this standard permit shall satisfy all of the requirements of §106.512 of this title (relating to Stationary Engines and Turbines), except that registration using the Form PI-7 or PI-8 shall not be required. Emissions from engines or turbines shall be limited to the amounts found in §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule).

(5) Total Volatile Organic Compound (VOC) emissions from a natural gas glycol dehydration unit shall not exceed ten tons per year (tpy) unless the vapors are collected and controlled in accordance with subsection (b)(2) of this section.

(6) Any combustion unit (excluding flares, internal combustion engines, or natural gas turbines), with a design maximum heat input greater than 40 million British thermal units (Btu) per hour (using lower heating values) shall not emit more than 0.06 pounds of nitrogen oxides per million Btu.

(7) No facility which is less than 500 feet from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than ten tpy, but less than 25 tpy, unless the equipment is inspected and repaired according to subsection (c)(1) of this section.

(8) No facility which is 500 feet or more from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 25 tpy unless the equipment is inspected and repaired according to subsection (c)(1) of this section.

(9) No facility which is less than 500 feet from the nearest off-plant receptor shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 25 tpy unless the equipment is inspected and repaired according to subsection (c)(2) of this section.

(10) No facility shall be allowed to emit uncontrolled VOC process fugitive emissions equal to or greater than 40 tpy unless the equipment is inspected and repaired according to subsection (c)(2) of this section.

(11) No facility which is located less than 1/4 mile from the nearest off-plant receptor shall be allowed to emit hydrogen sulfide H_2S or SO_2 process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section. No facility which is located at least 1/4 mile from the nearest off-plant receptor shall be allowed to emit H_2S or SO_2 process fugitive emissions unless the equipment is inspected and repaired according to subsection (c)(3) of this section or unless the H_2S or SO_2 emissions are monitored with ambient property line monitors according to subsection (e)(1) of this section. Components in sweet crude oil or gas service as defined by Chapter 101 of this title (relating to General Air Quality Rules) are exempt from these limitations.

(12) Flares shall be designed and operated in accordance with 40 Code of Federal Regulations (CFR), Part 60.18 or equivalent standard approved by the commission, including specifications of minimum heating values of waste gas, maximum tip velocity, and pilot flame monitoring. If necessary to ensure adequate combustion, sufficient gas shall be added to make the gases combustible. An infrared monitor is considered equivalent to a thermocouple for flame monitoring purposes. An automatic ignition system may be used in lieu of a continuous pilot.

(13) Appropriate documentation shall be submitted to demonstrate that compliance with the Prevention of Significant Deterioration (PSD) and nonattainment new source review provisions of the FCAA, Parts C and D, and regulations promulgated thereunder, and with Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) are being met. The oil and gas facility shall be required to meet the requirements of Subchapter B of this chapter (relating to New Source Review Permits) instead of this subchapter if a PSD or nonattainment permit or a review under Subchapter C of this chapter is required.

(14) Documentation shall be submitted to demonstrate compliance with applicable New Source Performance Standards (NSPS, 40 CFR Part 60).

(15) Documentation shall be submitted to demonstrate compliance with applicable National Emission Standards for Hazardous Air Pollution (NESHAP, 40 CFR Part 61).

(16) Documentation shall be submitted to demonstrate compliance with applicable maximum achievable control technology standards as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed in 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)).

(17) New and increased emissions shall not cause or contribute to a violation of any National Ambient Air Quality Standard or regulation property line standards as specified in Chapters 111, 112, and 113 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter; Control of Air Pollution from Sulfur Compounds; and Control of Air Pollution from Toxic Materials). Engineering judgment and/or computerized air dispersion modeling may be used in this demonstration. To show compliance with §116.610(a)(1) of this title (relating to Applicability) for H_2S emissions from process vents, ten milligrams per cubic meter shall be used as the "L" value instead of the value represented by §116.610(a)(1) of this title.

(18) Fuel for all combustion units and flare pilots shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf), or field gas. If field gas contains more than 1.5 grains of H_2S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed the limitations listed in the standard permit registration. If a flare is the only combustion unit on a property, the operator shall not be required to maintain such records on flare pilot gas.

(b) Control requirements.

(1) Floating roofs or equivalent controls shall be required on all new or modified storage tanks, other than pressurized tanks which meet §106.476 of this title (relating to Pressurized Tanks or Tanks Vented to Control), unless the tank is less than 25,000 gallons in nominal size or the vapor pressure of the compound to be stored in the tank is less than 0.5 pounds per square inch absolute (psia) at maximum short-term storage temperature.

(A) For internal floating roofs, mechanical shoe primary seal or liquid-mounted primary seal or a vapor-mounted primary with rim-mounted secondary seal shall be used.

(B) Mechanical shoe or liquid-mounted primary seals shall include a rim-mounted secondary seal on all external floating roofs tanks. Vapor-mounted primary seals will not be accepted.

(C) All floating roof tanks shall comply with the requirements under §115.112(a)(2)(A) - (F) of this title (relating to Control Requirements).

(D) In lieu of a floating roof, tank emissions may be routed to:

(i) a destruction device such that a minimum VOC destruction efficiency of 98% is achieved; or

(ii) a vapor recovery system such that a minimum VOC recovery efficiency of 95% is achieved.

(E) Independent of the permits by rule listed in this paragraph, if the emissions from any fixed roof tank exceed ten tpy of VOC or ten tpy of sulfur compounds, the tank emissions shall be routed to a destruction device, vapor recovery unit, or equivalent method of control that meets the requirements listed in subparagraph (D) of this paragraph.

(2) The VOC emissions from a natural gas glycol dehydration unit shall be controlled as follows.

(A) If total uncontrolled VOC emissions are equal to or greater than ten tpy, but less than 50 tpy, a minimum of 80% by weight minimum control efficiency shall be achieved by either operating a condenser and a separator (or flash tank), vapor recovery unit, destruction device, or equivalent control device.

(B) If total uncontrolled VOC emissions are equal to or greater than 50 tpy, a minimum of:

(i) 98% by weight minimum destruction efficiency shall be achieved by a destruction device or equivalent; or

(ii) 95% by weight minimum control efficiency shall be achieved by a vapor recovery system or equivalent.

(c) Inspection requirements.

(1) Owners or operators who are subject to subsection (a)(7) or (8) of this section shall comply with the following requirements.

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is detected to exceed a VOC concentration greater than 10,000 parts per million by volume (ppmv) above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound for all components. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.5 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 pounds per square inch (psi) (five kilopascals (Kpa)) below ambient pressure, then these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by the agency

representatives, the EPA, or any other air pollution agency having jurisdiction. All piping and valves two inches nominal size and smaller, unless subject to federal NSPS requiring a fugitive VOC emissions leak detection and repair program or Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds), are also exempt from this requirement.

(B) All technically feasible repairs shall be made to repair a VOC leaking process fugitive component within 15 days after the leak is detected. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging. The executive director, at his discretion, may require early unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting shutdown.

(C) New and reworked underground process pipelines containing VOCs shall contain no buried valves such that process fugitive emission inspection and repair is rendered impractical.

(D) To the extent that good engineering practice will permit, new and reworked valves and piping connections in VOC service shall be so located to be reasonably accessible for leak-checking during plant operation. Valves elevated more than two meters above a support surface will be considered non-accessible and shall be identified in a list to be made available upon request.

(E) New and reworked piping connections in VOC service shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges in VOC service shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.

(F) Each open-ended valve or line in VOC service, other than a valve or line used for safety relief, shall be equipped with a cap, blind flange, plug, or a second valve. Except during sampling, the second valve shall be closed.

(G) Accessible valves in VOC service shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc or venting to a control device are exempt from monitoring.

(H) Dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system, submerged pumps, or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) are exempt from monitoring.

(I) All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements.

This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(2) Owners or operators who are subject to subsection (a)(9) or (10) of this section shall comply with the following requirements.

(A) No component shall be allowed to have a VOC leak for more than 15 days after the leak is found which exceeds a VOC concentration greater than 500 ppmv for all components except pumps and compressors and greater than 2,000 ppmv for pumps and compressors above background as methane, propane, or hexane, or the dripping or exuding of process fluid based on sight, smell, or sound. The VOC fugitive emission components which contact process fluids where the VOCs have an aggregate partial pressure or vapor pressure of less than 0.044 psia at 100 degrees Fahrenheit are exempt from this requirement. If VOC fugitive emission components are in service where the operating pressure is at least 0.725 psi (five Kpa) below ambient pressure, these components are also exempt from this requirement as long as the equipment is identified in a list that is made available upon request by agency representatives, the EPA, or any air pollution control agency having jurisdiction. All piping and valves two inches nominal size and smaller are also exempt from this requirement.

(B) All technically feasible repairs shall be made to repair a VOC leaking process fugitive component within 15 days after the leak is detected. If the repair of a component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown. All leaking components which cannot be repaired until a scheduled shutdown shall be identified for such repair by tagging. The executive director, at his or her discretion, may require early unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting shutdown.

(C) New and reworked underground process pipelines containing VOCs shall contain no buried valves such that process fugitive emission inspection and repair is rendered impractical.

(D) To the extent that good engineering practice will permit, new and reworked valves and piping connections in VOC service shall be so located to be reasonably accessible for leak-checking during plant operation. Valves elevated more than two meters above a support surface will be considered non-accessible and shall be identified in a list to be made available upon request.

(E) New and reworked piping connections in VOC service shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas-tested or hydraulically-tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges in VOC service shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.

(F) Each open-ended valve or line in VOC service, other than a valve or line used for safety relief, shall be equipped with a cap, blind flange, plug, or a second valve. Except during sampling, the second valve shall be closed.

(G) Accessible valves in VOC service shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc or venting to a control device are exempt from monitoring.

(H) Dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order or seals equipped with an automatic seal failure detection and alarm system, submerged pumps, or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) are exempt from monitoring.

(I) All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(J) After completion of the required quarterly inspections for a period of at least two years, the operator of the oil and gas facility may request in writing to the Office of Permitting, Remediation, and Registration that the monitoring schedule be revised based on the percent of valves. Leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that has been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(K) A directed maintenance program shall be used and consist of the repair and maintenance of VOC fugitive emission components assisted simultaneously by the use of an approved gas analyzer such that a minimum concentration of leaking VOC is obtained for each component being maintained. Replaced components shall be remonitored within 30 days of being placed back into VOC service.

(3) For owners and operators who are subject to the applicable parts of subsection (a)(11) of this section, auditory and visual checks for SO_2 and H_2S leaks within the operating area shall be made every day. Immediately, but no later than eight hours upon detection of a leak, operating personnel shall take the following actions:

(A) isolate the leak; and

(B) commence repair or replacement of the leaking component; or

(C) use a leak collection/containment system to prevent the leak until repair or replacement can be made if immediate repair is not possible.

(d) Approved test methods.

(1) An approved gas analyzer used for the VOC fugitive inspection and repair requirement in subsection (c) of this section, shall conform to requirements listed in 40 CFR §60.485(a) and (b).

(2) Tutweiler analysis or equivalent shall be used to determine the H_2S content as required under subsections (a) and (e) of this section.

(3) Proper operation of any condenser used as a VOC emissions control device to comply with subsection (a)(5) of this section shall be tested to demonstrate compliance with the minimum control efficiency. Sampling shall occur within 60 days after start-up of new or modified facilities. The permittee shall contact the Engineering Services Section, Office of Compliance and Enforcement 45 days prior to sampling for approval of sampling protocol. The appropriate regional office in the region where the source is located shall also be contacted 45 days prior to sampling to provide them the opportunity to view the sampling. Neither the regional office nor the Engineering Services Section, Office of Compliance and Enforcement personnel are required to view the testing. Sampling reports which comply with the provisions of the "TNRCC Sampling Procedures Manual," Chapter 14 ("Contents of Sampling Reports," dated January 1983 and revised July 1985), shall be distributed to the appropriate regional office, any local programs, and the Engineering Services Section, Office of Compliance and Enforcement.

(e) Monitoring and recordkeeping requirements.

(1) If the operator elects to install and maintain ambient H_2S property line monitors to comply with subsection (a)(11) of this section, the monitors shall be approved by the Engineering Services Section, Office of Compliance and Enforcement office in Austin, and shall be capable of detecting and alarming at H_2S concentrations of ten ppmv. Operations personnel shall perform an initial on-site inspection of the facility within 24 hours of initial alarm and take corrective actions as listed in subsection (c)(3)(A) - (C) of this section within eight hours of detection of a leak.

(2) The results of the VOC leak detection and repair requirements shall be made available to the executive director or any air pollution control agency having jurisdiction upon request. Records, for all components, shall include:

(A) appropriate dates;

(B) test methods;

(C) instrument readings;

(D) repair results; and

(E) corrective actions. Records of flange inspections are not required unless a leak is detected.

(3) Records for repairs and replacements made due to inspections of H_2S and SO_2 components shall be maintained.

(4) Records shall be kept for each production, processing, and pipeline tank battery or for each storage tank if not located at a tank battery, on a monthly basis, as follows:

(A) tank battery identification or storage tank identification, if not located at a tank battery;

(B) compound stored;

(C) monthly throughput in barrels/month; and

(D) cumulative annual throughput, barrels/year.

(5) A plan shall be submitted to show how ongoing compliance will be demonstrated for the efficiency requirements listed in subsection (b)(1)(D) of this section. The demonstration may include, but is not limited to, monitoring flowrates, temperatures, or other operating parameters.

(6) Records shall be kept on at least a monthly basis of all production facility flow rates (in standard cubic feet per day) and total sulfur content of process vents or flares or gas processing streams. Total sulfur shall be calculated in long tons per day.

(7) Records shall be kept of all ambient property line monitor alarms and shall include the date, time, duration, and cause of alarm, date and time of initial on-site inspection, and date and time of corrective actions taken.

(8) All required records shall be made available to representatives of the agency, the EPA, or local air pollution control agencies upon request and be kept for at least two years. All required records shall be kept at the plant site, unless the plant site is unmanned during business hours. For plant sites ordinarily unmanned during business hours, the records shall be maintained at the nearest office in the state having day-to-day operations control of the plant site.

Adopted August 9, 2000 Effective September 4, 2000

§106.352. Oil and Gas Production Sites.

(a) Applicability. This section applies to all facilities, or groups of facilities, at a site which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids or gases found in geologic formations on or beneath the earth's surface including, but not limited to, crude oil, natural gas, condensate, and produced water. The following restrictions apply:

(1) Only one Oil and Gas Production Sites permit by rule may be claimed or registered for each site and authorizes facilities in sweet or sour service;

(2) All site-wide emissions shall be less than 250 tons per year (tpy) of nitrogen oxides (NO_X) or carbon monoxide (CO) and 25 tpy of any other air contaminant, or meet the most stringent applicable limits in this section;

(3) No other authorizations under this chapter for oil and gas production-related facilities may be claimed for a site which is authorized under this section.

(4) This section does not relieve the owner or operator from complying with any other applicable provision of the Texas Health and Safety Code, Texas Water Code, rules of the Texas Commission on Environmental Quality (TCEQ), or any additional state or federal regulations. Emissions that exceed the limits in this section are not authorized and are violations of the permit by rule; and

(5) Emissions from upset or malfunctions are not authorized by this section.

(b) Definitions.

(1) Oil and Gas Site (OGS) – is defined as follows:

(A) For purposes of determining applicability of Chapter 122 of this title, relating to Federal Operating Permits, site includes:

(i) The aggregation of all oil and gas facilities designated under same 2-digit standard industrial classification (SIC) codes;

(ii) Facilities located within at least 1/4 mile from each other on contiguous or adjacent properties under common control; and

(iii) Fugitives shall not be considered.

(B) For purposes of determining compliance with this section's hourly and annual emission limits, site includes:

(i) The aggregation of all oil and gas facilities;

(ii) Facilities located within a 1/4 mile on contiguous or adjacent properties under common control; and

(iii) Fugitive emission sources must be included.

(2) Existing OGS - Existing facilities, groups of facilities, or any combination of

facilities and sources at a site that has authorized oil and gas production facilities or groups of facilities which otherwise does not meet de minimis criteria for pipelines and isolation valves as established through §116.119 of this title, relating to De Minimis Facilities or Sources.

(3) Facility – a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A well test lasting less than 72 hours is not a facility.

(4) Receptor – For this section, receptor includes any building which was in use as a single or multi-family residence, school, or place of worship at the time this section is claimed. A residence is a structure primarily used as a permanent dwelling. This term does not include structures occupied or used solely by the owner of the OGS facility or the owner of the property (if leaseholder) upon which the OGS facility is located. All measurements of distance to receptors shall be taken from the point on the OGS facility that is nearest to the residence, school, or place of worship toward the point on the building in use as a residence, school, or place of worship that is nearest to the OGS facility.

(c) Authorized Facilities, Changes and Activities.

(1) For existing OGS which are authorized by previous versions of this section:

(A) Addition of new facilities, or changes to existing OGS, which increases the potential to emit, production processing capacity, or any increase in emissions over previously registered or certified representations requires the following:

(i) Re-authorization of the site under this section.

(ii) If all applicable requirements of this section cannot be met, prior to the construction of new facilities or implementing the change, the OGS must obtain authorization under the Air Quality Standard Permit for Oil and Gas Production Sites, or permit under §116.111 of this title, relating to General Application.

(iii) Facility information shall be incorporated at the next revision or update to a registration or certification under this section.

(B) Additions of piping and fugitive components that increases emissions less than or equal 0.1 tpy of volatile organic compounds (VOC) and do not otherwise increase the potential to emit, or production processing capacity are authorized and must meet only the applicable best management practices (BMP) requirements of subsection (e) of this section. This information shall be incorporated at the next revision or update to a registration or certification under this section.

(C) Replacement of any facility is authorized and must meet only the applicable BMP requirements of subsection (e) of this section if all of the following are met:

(i) The replacement facility must have the same or less capacity, horsepower, production, function;

(ii) The replacement facility meets design, performance and requirements as established in the Air Quality Standard Permit for Oil and Gas Production Sites Tables 8-10 relating to Best Available Control Technology;

(iii) The replacement facility does not increase the previously registered

or certified emissions, potential to emit, or production processing capacity;

(iv) The replacement facility does not exceed the thresholds for major source or major modification as defined in §116.12 of this title, relating to Nonattainment and Prevention of Significant Deterioration Review Definitions, and in Federal Clean Air Act §112(g) or §112(j);

(v) The replacement facility complies with all applicable Title 40, Code of Federal Regulations, Parts 60 and 63 requirements for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and Maximum Achievable Control Technology (MACT); and

(vi) Facility information shall be incorporated at the next revision or update to a registration or certification under this section.

(D) If there are no changes or additions to the site, the following apply:

(i) On or after January 5, 2012, emissions from planned maintenance, startup, and shutdown (MSS) must meet the requirements of subsections (i) - (l) of this section. Prior to January 5, 2012 OGS authorized under previous version of this section may voluntarily authorize planned MSS emissions under this section. The air contaminants which must demonstrate compliance with hourly limits include: condensate, crude oil, natural gas, benzene, and hydrogen sulfide (H_2S). Emissions of benzene must also meet annual limits. Records of these activities must meet the requirements in subsection (j) of this section. Planned MSS information shall be incorporated at the next revision or update to a registration under this section.

(ii) Identifying information (updated Core Data and basic identifying information through E-permits (or if not available, hard-copy) using the "APD OGS Basic Notification" and must be provided no later than January 1, 2013.

(2) The Executive Director may deny an application for registration under this section for good cause.

(d) Facilities, Changes, and Activities Not Authorized. The following are not authorized under this section:

(1) Any site claiming this section cannot also authorize any new facility, or changes to an existing facility, which handle (or is related to the processing of) crude oil, condensate, natural gas, or any other petroleum raw material, product or by-product under any version of the Oil and Gas Production Sites Standard Permit or permit under §116.111 of this title, relating to General Application.

(2) Except for planned MSS which must meet the requirements of subsections (i) - (l) of this section, any site with a permit under §116.111 of this title, relating to General Application, cannot also claim this section for any new facility, or changes to an existing facility, which handle (or is related to the processing of) crude oil, condensate, natural gas, or any other petroleum raw material, product or by-product..

(3) Sour water strippers or sulfur recovery units;

(4) Carbon dioxide hot carbonate processing units;

(5) Water injection facilities;

(6) Liquefied Petroleum Gases (LPG), crude oil, or condensate transfer or loading into or from railcars, ships, or barges;

(7) Incinerators for solid waste destruction;

(8) Remediation of petroleum contaminated water and soil;

(9) Underground storage of natural gas and the associated surface support facilities;

(10) Any emission increases in an Air Pollutant Watch List area for one or more applicable Air Pollutant Watch List contaminants designated for that area; and

(11) Except for the activities described in subsection (i)(4) of this section, unplanned MSS activities and emission events as defined in §101.1 of this title, relating to Definitions.

(e) Best Management Practices (BMP). For any facility, group of facilities, emission control equipment or site using this section, the following BMP shall apply:

(1) All facilities which have the potential to emit air contaminants must be maintained in good working order and operated properly during facility operations.

(2) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve to seal the line so that no leakage of emissions occurs. If equipped with a second valve, both valves shall be closed except during sampling.

(3) Open-topped tanks or ponds containing VOCs or H_2S are not permitted;

(4) Tank hatches and valves, which emit to the atmosphere, shall remain closed except for sampling or planned maintenance activities. All pressure relief devices (PRD) shall be designed and operated to ensure that proper pressure in the vessel is maintained and shall stay closed except in upset or malfunction conditions. If the PRD does not automatically reset, it must be reset within 24 hours at a manned site and within one week if located at an unmanned site;

(5) All seals and gaskets in VOC or H_2S service shall be installed, checked, and properly maintained to prevent leaking;

(6) Maintenance of facilities shall follow manufacturer's specifications and recommended programs when available. In the absence of manufacturer's recommended programs, each site shall establish and maintain a program to replace, repair, and/or maintain facilities to keep them in good working order. Replacement and repair of equipment shall follow these established programs;

(7) Fugitive components and instrumentation in gas or liquid service at the site which are not otherwise subject to a leak detection and repair (LDAR) program, with the uncontrolled potential to emit equal to or greater than 5 tpy VOC or 0.1 tpy H_2S shall comply with the following:

(A) Be inspected at least quarterly by audio, visual, and olfactory (AVO) observations;

(B) Be inspected annually using EPA Test Method 21, with a portable analyzer

set at 10,000 parts per million by volume (ppmv), leak detection limit. In lieu of the portable analyzer, the owner or operator may use the Alternative Work Practice in 40 CFR §60.18(g) - (i) to perform inspections with the following provisions:

(i) The monitoring frequency using an optical gas imaging instrument and the Alternative Work Practice must be at least once per quarter.

(ii) The optical gas imaging instrument must have a detection sensitivity level of no greater than 60 grams per hour.

(iii) The annual Test Method 21 requirement in 40 CFR §60.18(h)(7) and the reporting requirement in 40 CFR §60.18(i)(5) do not apply.

(C) Damaged or leaking valves, connectors, pumps, compressors, and agitator seals found to be emitting VOCs in excess of 10,000 ppmv as determined using a portable analyzer, found by AVO inspection to be leaking (e.g., dripping process fluids), or found leaking using the Alternative Work Practice shall be tagged and replaced or repaired;

(D) Every reasonable effort shall be made to repair a leaking component within 30-days after the leak is found. If the repair of a component would require a unit shutdown, which would create more emissions than the repair would eliminate, the repair may be delayed until the next planned shutdown; and

(E) To the extent that good engineering practices will permit, new and reworked valves and piping connections shall be located in a place that is reasonably accessible for leak-checking during plant operation.

(f) General Requirements. All facilities under this section shall meet the following specifications, design, and control requirements:

(1) Any OGS facility shall be operated at least fifty (50) feet from any property-line or receptor whichever is closer to the facility. This distance limitation does not apply to the following:

(A) Any OGS facility at a location for which the distance requirements were satisfied at the time this section is claimed, registered, or certified (provided that the authorization was maintained) regardless of whether a receptor is subsequently built or put to use fifty (50) feet from any OGS facility; or

(B) Existing, immovable, fixed OGS facilities which were constructed and previously authorized, even if modified.

(2) Uncontrolled venting of H_2S emissions equal to or greater than 24 ppmv is not allowed. During production or planned MSS conditions, all vent streams containing more than 24 ppmv H_2S shall be routed to a thermal control device with at least 98% destruction effectiveness. During emergency or upset conditions, all vent streams containing more than 24 ppmv H_2S shall be sent to a flare or thermal oxidizer. Emergency and upset conditions are not authorized by this section and shall be handled and reported according to the requirements of Chapter 101, Subchapter F, Division 1 of this title relating to Emissions Events. It is not permissible under any conditions to vent acid gases directly to the atmosphere.

(3) Stationary engines and turbines shall meet the following:

(A) Low NO_X Lean burn engines or rich burn engines equipped with catalytic converters shall be designed and operate at 0.5 grams (g) NO_x / horsepower- hour (hp-hr) for engines greater than or equal to 500 hp and 2.0 g NO_x/hp-hr for engines less than 500 hp;

(B) All engines must be designed and operate at 3 g CO /hp-hr, and 1 g VOC /hp-hr;

(C) Fuel for all internal combustion engines (ICE) shall be sweet gas or liquid petroleum gas;

(D) All applicable requirements of Chapter 117 of this title, relating to Control of Air Pollution from Nitrogen Compounds; and

(E) All applicable requirements of 40 CFR 60 and 40 CFR 63, relating to NSPS, NESHAPs, and MACT.

(4) All storage tanks, process vessels, or other containment devices (including temporary liquid storage tanks) shall be white, aluminum, or of an equivalent reflective color. Paint shall be maintained in good condition. The only exception to this requirement is for where a dark color is necessary to assist the tank or process vessels in absorbing or retaining heat for the purpose of maintaining material in a liquid state.

(5) Glycol dehydrators shall have one or more of the following: flash tank, still vent, and condenser. All emissions shall be routed to a vapor recovery unit (VRU), reboiler, or other thermal destruction device.

(6) Amine units that are used to remove either H_2S or carbon dioxide (CO_2) shall be routed to a VRU, reboiler, or other thermal destruction device.

(7) VRUs that are used to control emissions must be designed so as to handle twice the amount of emissions they are designed to recover. Design must consider periods when temperature and pressure may have an affect on the system. All valves must be designed and maintained to prevent leaks. All hatches and openings must be properly gasketed and sealed with the unit properly connected.

(8) Flares used for control of emissions from production, planned MSS or emergency/upset uses must be designed and operated in accordance with the following:

(A) Meet specifications for minimum heating values of waste gas, maximum tip velocity, and pilot flame monitoring found in 40 CFR § 60.18, excluding velocity tests in 40 CFR §60.18(f);

(B) If necessary to ensure adequate combustion, sufficient gas shall be added to make the gases combustible;

(C) An infrared monitor is considered equivalent to a thermocouple for flame monitoring purposes;

(D) An automatic ignition system may be used in lieu of a continuous pilot;

(E) Flares must be lit at all times when gas streams are present; and

(F) Fuel for all flares shall be sweet gas or liquid petroleum gas.

(9) Thermal Oxidizers must have at least 99.9% destruction efficiency, a minimum residency of 0.5 seconds, operate at a temperature of at least 1400 F, and be equipped with a continuous temperature monitor.

(10) Cooling Towers and other process cooling water handling systems must be designed and operated to avoid direct contact with gaseous or liquid process streams containing VOC, H2S, halogens or halogen compounds, cyanide compounds, inorganic acids, or acid gases.

(11) Electric generating facilities used for supporting OGS operations must comply with the technical requirements of the Electric Generating Unit (EGU) standard permit (not including the EGU registration requirements).

(g) Level 1 Notification. Within 180 days of start of operation or implemented changes, the oil and gas site owner or operator shall submit a notification to the Executive Director through E-permits or hard-copy of Form "APD OGS PBR Notification". This notification shall include a detailed summary of maximum emissions estimates based on: site-specific gas and liquid analysis; equipment design specifications and operations; material type and throughput; and other actual parameters essential for accuracy.

(1) Total maximum estimated annual emissions shall meet the most stringent of the following:

(A) Emissions of any air contaminant shall not exceed the applicable limits for a major stationary source or major modification for prevention of significant deterioration (PSD), nonattainment new source review (NNSR) as specified in §116.12 of this title and in Federal Clean Air Act §112(g), §112(j), or Title V major source definitions.

(B) Total emissions of VOCs shall not exceed 10 tons per year (tpy) except during planned MSS plant turnarounds, which shall not occur more than once per year;

(C) Total sulfur compounds (as H_2S), excluding sulfur dioxide (SO_2), will not exceed 0.1 tpy except during planned MSS plant turnarounds, which shall not occur more than once per year; and

(2) The following facilities are not covered by this paragraph:

(A) Amine treaters;

(B) Sweetening units;

(C) Glycol dehydrators; or

(D) Thermal control devices except as used for planned MSS activities as required in subsection (i) of this section or emergency flares with an auto-ignition system.

(3) Emissions from production operations must meet the emission rate from all facilities and activities as applicable using the Emission Limit Tables 1-2 in subsection (l) of this section. The air contaminants which must meet hourly limits include: benzene, formaldehyde, and NO_X. Emissions of

benzene must also meet annual emission limits.

(4) The commission encourages the use of recovery or recycling equipment or other techniques to reduce and/or minimize air emissions; these systems may be used to meet the conditions of this subsection.

(h) Level 2 Registration. If the requirements of the Level 1 Notification paragraph cannot be met, then the conditions of this paragraph must be followed and the owner or operator of the oil and gas site shall submit a registration using Form PI-7 Registration for Permits by Rule, or if appropriate, a certified registration using Form PI-7-CERT Certification and Registration for Permits by Rule. This registration shall include a detailed summary of maximum emissions estimates based on: site-specific gas and liquid analysis; equipment design specifications and operations; material type and throughput; and other actual parameters essential for accuracy. If the registration is for a new site, or new facilities at an existing site, emission estimates shall be updated and recorded for site- or facility-specific data within 180 days from start of operation or implemented changes.

(1) Total maximum estimated annual emissions of any air contaminant shall not exceed the applicable limits for a major stationary source or major modification for PSD and NNSR as specified in §116.12 of this title.

(2) Emissions from production operations must meet the emission rate from all facilities and activities as applicable using the Emission Limit Tables 1-3 in subsection (l) of this section. The air contaminants which must demonstrate compliance with hourly limits include: crude oil, benzene, formaldehyde, H_2S, SO_2, and NO_X. Emissions of benzene must also meet annual limits.

(3) The commission encourages the use of recovery or recycling equipment or other techniques to reduce and/or minimize air emissions and these systems may be used to meet the conditions of this subsection. Thermal destruction devices may also be used if they meet the design, operation and record requirements of this section.

(4) Certifications to establish enforceable emission limits shall be submitted in the following circumstances:

(A) For projects at existing major sites, establish emission increases less than any applicable threshold or contemporaneous emission increases for major sources or major modifications under NNSR or PSD;

(B) If a project includes control technology, limited hours, throughput, and materials or other operational limitations which are less than the potential to emit (PTE).

(C) If a project is located at a site subject to NO_X cap and trade requirements in Chapter 101, Subchapter H of this title relating to Emissions Banking and Trading.

(D) For projects which resolve compliance issues.

(E) For claims under this section following subsection (i)(4) of this section relating to planned MSS.

(i) Planned Maintenance, Start-ups and Shutdowns (MSS). For any facility, group of facilities or site using this section, the following shall apply:

(1) After January 5, 2012, all emissions from planned MSS activities and facilities must be considered for compliance with applicable limits of this section. Prior to January 5, 2012 representations and registration of planned MSS is voluntary, but if represented must meet the applicable limits of this section.

(2) All releases of air contaminants during, or as result of, planned MSS must be quantified and meet the emission limits using Tables 1-4 in subsections (k) - (l) of this section as applicable. The air contaminants which must demonstrate compliance with hourly limits, including: condensate, crude oil, natural gas, benzene, H2S, SO2, and NOx. Emissions of benzene must also meet annual limits. This analysis must include:

(A) Alternate operational scenarios or redirection of vent streams;

(B) Pigging, purging, and blowdowns;

(C) Temporary facilities meeting §106.263(e) of this title, relating to Routine Maintenance, Start-up and Shutdown of Facilities and Temporary Maintenance Facilities if used for degassing or purging of tanks, vessels, or other facilities;

(D) Degassing or purging of tanks, vessels, or other facilities;

(E) Turbine hot section swaps;

(F) Management of sludge from pits, ponds, sumps, and water conveyances;

(G) Natural gas instrumentation/analyzer maintenance;

(H) Meter proving;

(I) Amine and other treatment chemicals replacement (except glycols); and

(J) Hot oil treatments.

(3) Other MSS activities authorized by this section are limited to the following. These planned MSS activities require recordkeeping, but no emissions quantification unless specifically requested by the Executive Director:

(A) Routine engine component maintenance including filter changes, oxygen sensor replacements, compression checks, overhauls, lubricant changes, spark plug changes, and emission control system maintenance in combination with any other activities allowed in this subsection;

(B) Boiler refractory replacements and cleanings;

(C) Heater and heat exchanger cleanings;

(D) Lubrication oil level checks;

(E) Amine filter replacements;

(F) Glycol draining and refilling;

(G) Pump, compressor, heat exchanger, vessel, water treatment systems (cooling, boiler, potable), and fugitive component maintenance;

(H) Use of aerosol cans, Soap and other aqueous based cleaners; and

(I) Pressure relief valve testing, calibration of analytical equipment; instrumentation/analyzer maintenance; Replacement of analyzer filters and screens; and cleaning sight glasses.

(4) Engine/compressor set start-ups associated with preventative system shutdown activities may be authorized as part of typical operations for an OGS if:

(A) Prior to operation, alternative operating scenarios to divert gas or liquid streams are registered and certified with all supporting documentation; and

(B) Engine/compressor shutdowns shall not result in emissions

(C) Emissions which result from the subsequent compressor start-up activities are controlled to a minimum of 98% efficiency for VOC and H_2S.

(j) Records, Sampling and Monitoring. The following records shall be maintained at a site in written or electronic form and be readily available to the agency or local air pollution control program with jurisdiction upon request. All required records must be kept at the facility site. If however, the facility normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the plant site.

(1) Sampling and demonstrations of compliance shall include the requirements listed in Table 5 in subsection (l) of this section.

(2) Monitoring and Records for demonstrations of compliance shall include the requirements listed in Table 6 in subsection (l) of this section.

(k) Emission Table Uses Based on Impacts Evaluation. The following requirements apply to Tables 1-4 listed in subsection (l) of this section.

(1) Tables 1-4 in subsection (l) of this section must be used for determining allowable site-wide pound per hour (lb/hr) and ton per year (tpy) emissions from production and planned MSS operations at any proposed or existing OGS claiming this section.

(2) All emissions estimates must be based on worst-case operations.

(3) For each facility or group of facilities, the smallest corresponding distance from any emission point, vent, or fugitive component to the nearest receptor must be used with the appropriate Table for compliance determination with the published Effects Screening Levels (ESLs) as found through the current list at:
http://www.tceq.state.tx.us/implementation/tox/esl/list_main.html#esl_1 .

(4) For each facility or group of facilities, the smallest corresponding distance from any emission point, vent, or fugitive component to the nearest property line must be used with the appropriate Table for compliance determination with any applicable state and federal ambient air quality standard.

(5) The most appropriate character of VOC must be used for each emission release point at the site. If all applicable VOCs are not evaluated, the most restrictive ESL, most conservative dispersion parameters, closest distance, and lowest release heights shall be used to determine maximum acceptable emissions;

(6) Formaldehyde emissions need to be evaluated for Engines and Turbines only.

(7) Linear interpolation between height and distance points may be used with the tables; however a distance of less than 50 feet or greater than 5500 feet may not be used. If distances and release heights are not interpolated, the next lowest height and lesser distances shall be used for determination of maximum acceptable emissions.

(8) The tables shall be used with the equations in either (A) or (B) of this paragraph:

(A) For single releases or co-located groups of similar releases the following equations can be used:

(i) For an ambient air standards hourly emissions are determined by:

$$E_{MAX} = P/G$$

where E_{MAX} = maximum hourly (lb/hr) emissions acceptable
P = property line standard ($\mu g/m^3$)
G = the most stringent of any applicable generic value from the Tables at the emission point's release height and distance to property line ([$\mu g/m^3$]/[lb/hr])

(ii) For health effects review hourly emissions are determined by:

$$E_{MAX} = ESL/G$$

where E_{MAX} = maximum hourly (lb/hr) emissions acceptable
ESL = current published effects screening level for the specific air contaminant ($\mu g/m^3$)
G = the most stringent of any applicable generic value from the Tables at the emission point's release height and distance to receptor ([$\mu g/m^3$]/[lb/hr])

(iii) For health effects review annual emissions are determined by:

$$E_{MAX} = (8760/2000)\ ESL/(0.08*G)$$

where E_{MAX} = maximum annual (tpy) emissions acceptable
ESL = current published effects screening level for the specific air contaminant ($\mu g/m^3$)
G = the most stringent of any applicable generic value from the Tables at the emission point's release height and distance to receptor ([$\mu g/m^3$]/[lb/hr])

(B) The weighted fraction of all emission points at the site may be used to demonstrate compliance. If weighted ratios are not used, the total quantity of emissions shall be assumed to be released from the most conservative applicable G value at the site using (8)(A) of this subsection. For all simultaneous releases, the weighted fractions are determined by:

(i) For ambient standard and health effects review, hourly emissions are determined by:

$$E_{MAX}\ (lb/hr) = (WR\ EPN1)\ (P / G\ EPN1) + (WR\ EPN2)\ (P / G\ EPN2) + \ldots$$

or

$$E_{MAX}\ (lb/hr) = (WR\ EPN1)\ (ESL / G\ EP\ 1) + (WR\ EPN2)\ (ESL/G\ EPN2) + \ldots$$

where E_{MAX} = maximum hourly acceptable emissions (lb/hr)
WR EPN(x)= Weighted ratio of emissions for each EPN divided by the sum of total Emissions for all EPNs that emit that contaminant or ($E_{EPN\ x}/E_{total}$)
P = 1-hour property line standard ($\mu g/m^3$)
ESL = current published annual effects screening level for specific air contaminant ($\mu g/m^3$)
G = value from the Tables at the emission point's release height and distance to property line or receptor, as appropriate ([$\mu g/m^3$]/[lb/hr]).

(ii) For ambient standard and health effects review, annual emissions are determined by:

$$E_{MAX}\ (tpy) = (8760/2000)\ \{(WR\ EPN1)\ (P / [0.08 * G\ EPN1]) + (WR\ EPN2)\ (P / [0.08 * G\ EP\ 2]) + \ldots..\}$$

or $E_{MAX}\ (tpy) = (8760/2000)\ \{ (WR\ EPN1)\ (ESL / [0.08 * G\ EPN1]) + (WR\ EPN2)\ (ESL/[0.08 * G\ EPN2]) + \ldots\}$

where E_{MAX} = maximum annual acceptable emissions (tpy)
WR EPN(x)= Weighted ratio of emissions for each EPN divided by the sum of total Emissions for all EPNs that emit that contaminant or ($E_{EPN\ x}/E_{total}$)
P = 1-hour property line standard ($\mu g/m^3$)
ESL = current published annual effects screening level for specific air contaminant ($\mu g/m^3$)
G = value from the Tables at the emission point's release height and distance to property line or receptor, as appropriate ([$\mu g/m^3$]/[lb/hr]).

(l) Tables. The following Tables shall be used as required in subsections (a)-(k) of this section.

Table 1. Generic Modeling Results for Fugitives & Process Vents

Distance (feet)	Fugitive (µg/m³)/(lb/hr)	10 ft Vent (µg/m³)/(lb/hr)	20 ft Vent (µg/m³)/(lb/hr)	30 ft Vent (µg/m³)/(lb/hr)	40 ft Vent (µg/m³)/(lb/hr)	50 ft Vent (µg/m³)/(lb/hr)	60 ft Vent (µg/m³)/(lb/hr)
50	1467	469	168	90	70	65	28
100	1467	469	168	90	70	65	28
150	1393	469	168	90	70	65	28
200	1225	440	168	90	70	65	28
300	921	412	168	90	70	65	28
400	710	319	168	90	70	65	28
500	566	243	157	90	70	65	28
600	462	189	138	89	70	65	28
700	384	150	120	88	70	65	28
800	325	124	105	85	70	65	28
900	278	105	93	81	70	65	28
1000	241	91	84	77	69	65	26
1100	211	90	77	72	67	63	25
1200	186	89	70	68	64	61	24
1300	165	88	65	64	61	58	24
1400	148	87	61	60	58	55	24
1500	133	84	57	57	55	53	24
1600	121	82	54	53	52	50	23
1700	110	79	51	51	49	47	23
1800	101	76	50	48	47	45	22
1900	93	73	49	46	44	43	22
2000	86	70	49	44	42	41	21
2100	79	67	48	42	41	39	21
2200	73	64	47	40	39	38	20
2300	68	61	46	39	37	36	19
2400	64	59	45	37	36	35	19
2500	60	56	43	36	35	34	18
2600	57	54	42	34	33	32	18
2700	54	52	41	33	32	31	17
2800	51	50	40	32	31	30	17
2900	48	48	39	31	30	29	16
3000	46	46	37	30	29	28	16
3500	36	38	32	26	25	25	14
4000	30	32	28	24	23	22	12
4500	25	28	25	21	20	20	11
5000	21	24	22	19	18	18	10
5500	18	21	19	17	17	16	9

Table 2. Generic Modeling Results for Engines and Turbines

Distance	concentration per 1 pound/hour of emissions {(µg/m³)/(lb/hr)}										
(ft)	8 ft	10 ft	12 ft	14 ft	16ft	18ft	20 ft	25 ft	30 ft	35 ft	40 ft
50	60	59	54	50	43	35	34	25	21	20	19
100	60	59	54	50	43	35	34	25	21	20	19
150	60	59	54	50	43	35	34	25	21	20	19
200	60	59	54	50	43	35	34	25	21	20	19
300	60	59	54	50	43	35	34	25	21	20	19
400	60	59	54	50	43	35	34	25	21	20	19
500	60	59	54	50	43	35	34	25	21	20	19
600	57	57	52	48	41	34	34	25	21	20	19
700	52	52	47	44	38	31	31	25	21	20	19
800	47	47	43	40	34	28	28	24	21	20	19
900	45	42	39	36	31	26	26	23	21	20	19
1000	44	39	37	33	28	26	25	23	20	20	19
1100	42	36	36	30	26	25	25	23	20	19	19
1200	40	35	35	28	25	25	24	23	20	19	18
1300	38	34	34	26	24	23	23	23	20	19	17
1400	36	32	32	24	24	23	23	23	20	19	17
1500	34	31	31	24	23	23	23	23	20	19	16
1600	32	29	29	23	23	23	23	23	19	19	16
1700	30	28	28	23	23	23	22	22	19	18	16
1800	29	27	27	22	22	22	22	22	19	18	16
1900	28	25	25	22	22	22	22	21	18	17	16
2000	26	24	24	22	22	22	22	21	17	17	16
2100	25	23	23	21	21	21	21	20	17	16	15
2200	24	22	22	21	21	21	21	19	17	16	15
2300	23	21	21	20	20	20	20	19	16	16	15
2400	22	21	21	20	20	20	20	18	16	16	15
2500	22	20	20	19	19	19	19	18	16	15	15
2600	21	19	19	19	19	19	19	17	16	15	14
2700	20	18	18	18	18	18	18	17	15	15	14
2800	19	18	18	18	18	18	18	16	15	15	14
2900	19	18	18	17	17	17	17	16	15	14	14
3000	18	17	17	17	17	17	17	15	15	14	13
3500	16	15	15	15	15	15	15	14	13	13	12
4000	14	13	13	13	13	13	13	12	12	11	11
4500	13	12	12	12	12	12	12	11	10	10	10
5000	11	11	11	11	11	11	11	10	10	9	9
5500	11	10	10	10	10	10	10	9	9	9	8

Table 3. Generic Modeling Results for Flares

concentration per 1 pound/hour of emissions {(μg/m³)/(lb/hr)}

Distance (ft)	20 ft height	30 ft height	40 ft height	50 ft height	60 ft height
50	58	43	26	25	23
100	58	43	26	25	23
150	58	43	26	25	23
200	58	43	26	25	23
300	58	43	26	25	23
400	58	43	26	25	23
500	58	43	26	25	23
600	56	43	26	25	23
700	52	43	26	25	23
800	47	43	26	25	23
900	45	43	26	25	23
1000	44	43	26	25	23
1100	42	41	25	24	23
1200	40	40	24	24	22
1300	38	38	23	23	21
1400	36	36	23	21	21
1500	34	34	23	21	20
1600	32	32	22	21	20
1700	31	31	22	21	20
1800	29	29	22	20	20
1900	28	28	22	20	20
2000	26	26	21	20	19
2100	25	25	21	20	19
2200	24	24	20	20	19
2300	23	23	20	19	19
2400	22	22	20	19	18
2500	22	22	19	18	18
2600	21	21	19	18	17
2700	20	20	18	17	17
2800	19	19	18	17	16
2900	19	19	17	16	16
3000	18	18	17	16	16
3500	16	16	15	14	14
4000	14	14	13	12	12
4500	13	13	12	11	11
5000	11	11	11	10	10
5500	11	11	10	9	9

Table 4. Generic Modeling Results for Blowdowns & Gas Pipeline Purging

Distance (feet)	Blowdowns			Purging		
	concentration per 1 pound/hour of emissions {(µg/m³)/(lb/hr)}					
	3 ft height	10 ft height	20 ft height	3 ft height	10 ft height	20 ft height
50	4304	791	244	2203	536	191
100	4304	791	244	2203	536	191
150	4250	777	244	2127	536	191
200	3621	763	244	2025	534	191
300	2367	750	225	1692	532	188
400	1607	737	225	1295	516	185
500	1156	671	224	993	500	180
600	871	581	218	777	466	177
700	682	498	212	624	418	174
800	551	427	210	513	370	170
900	456	368	204	429	327	167
1000	384	320	194	365	290	164
1100	328	281	182	314	258	158
1200	284	248	170	274	230	150
1300	249	221	159	241	207	141
1400	220	198	147	214	187	133
1500	196	178	137	191	169	125
1600	176	162	127	172	154	117
1700	159	147	118	156	141	110
1800	145	135	110	142	129	103
1900	132	124	103	130	119	97
2000	121	114	96	119	110	91
2100	112	106	90	110	102	86
2200	103	98	85	102	95	81
2300	96	91	80	95	89	76
2400	90	86	75	89	84	72
2500	84	81	71	83	79	68
2600	79	76	68	78	74	65
2700	74	72	64	74	70	62
2800	70	68	61	70	66	59
2900	67	64	58	66	63	56
3000	63	61	55	62	60	54
3500	50	48	45	49	47	43
4000	40	39	37	40	39	36
4500	34	33	31	33	33	31
5000	29	28	27	28	28	26
5500	25	24	23	25	24	23

Table 5 Sampling and Demonstrations of Compliance

Category	Description	Specifications and Expectations
Sampling	When Applicable	(A)Sampling ports and platforms shall be incorporated into the design of all exhaust stacks according to the specifications set forth in "Chapter 2, Stack Sampling Facilities." The sampling point shall be upstream of the inlet to the control device or controlled recovery system. The sample ports and the collection system must be designed and operated such that there is no air leakage into the sample probe or the collection system downstream of the process equipment or vessel being purged. Alternate sampling facility designs may be submitted for written approval by the TCEQ Regional Director or his designee. (B) Sampling shall be conducted in accordance with the appropriate procedures of the TCEQ Sampling Procedures Manual and in accordance with the appropriate EPA Reference Methods. Sampling shall occur as three one-hour test runs and then averaged to demonstrate compliance with the limits of this section. Any deviations from those procedures must be approved in writing by the TCEQ Regional Director or his designee prior to sampling. (C) The TCEQ Regional Office shall be afforded the opportunity to observe all such sampling. (D) The holder of this authorization is responsible for providing sampling and testing facilities and conducting the sampling and testing operations at his expense. (E) The TCEQ Regional Office that has jurisdiction over the site shall be contacted as soon as testing is scheduled, but not less than 30 days prior to sampling to schedule a pretest meeting. The notice shall include: (i) Date for pretest meeting; (ii)Date sampling will occur; (iii) Name of firm conducting sampling; (iv) Type of sampling equipment to be used; (v) Method or procedure to be used in sampling; (vi)Procedure used to determine firing rates during the sampling period. The purpose of the pretest meeting is to review the necessary sampling and testing procedures, to provide the proper data forms for recording pertinent data, and to review the format procedures for submitting the test reports. (F) Within 60 days after the completion of the testing and sampling required, one copy of the sampling reports shall be sent to the TCEQ Region and Austin Central Records.
Control Devices	Flares	Proper sampling and monitoring ports must be included in the vent stream to allow for simultaneous monitoring and testing. The flow monitor sensor and analyzer sample points shall be installed in the vent stream as near as possible to the flare inlet such that the total vent stream to the flare is measured and analyzed.
Absorbers	Monitor Performance	Proper monitoring and sampling ports installed in the vent stream and the liquid inlet to monitor and test the unit simultaneously.Install and maintain a continuous specific gravity or pH monitor as appropriate. Install and maintain a continuous temperature monitor for the scrubber exhaust
fugitive component monitoring and repair program or LDAR	testing of the new and reworked piping connections	Gas or hydraulic testing at no less than operating pressure shall be performed prior to returning the components to service or they shall be monitored for leaks using an approved gas analyzer within 8 hours of the components being returned to service. Adjustments shall be made as necessary to obtain leak-free performance.
Fugitives and LDAR	Analyzers	An approved gas analyzer or other approved detection monitoring device used for the VOC fugitive inspection and repair requirement is a device that conforms to the requirements listed in Title 40 CFR §60.485(a) and (b), or is otherwise approved by the EPA as a device to monitor for VOC fugitive emission leaks. Approved gas analyzers shall conform to requirements listed in Method 21 of 40 CFR Part 60, Appendix A. The gas analyzer shall be calibrated with methane. In addition, the response factor of the instrument for a specific VOC of interest shall be determined and meet the requirements of Section 8 of Method 21. If a mixture of VOCs is being monitored, the response factor shall be calculated for the average composition of the process fluid. If a response factor less than 10 cannot be achieved using methane, then the instrument may be calibrated with one of the VOC to be measured or any other VOC so long as the instrument has a response factor of less than 10 for each of the VOC to be measured. In lieu of using a hydrocarbon gas analyzer and EPA Method 21, the owner or operator may use the Alternative Work Practice in 40 Code of Federal Regulations Part 60, §60.18(g) - (i). The optical gas imaging instrument must meet all requirements specified in 40 CFR §60.18(g) - (i), except as specified in subsection (e)(7) of this section for Best Management Practices.

Controlled and Uncontrolled Releases	degassing activities and emission controls	Testing and monitoring necessary to demonstrate compliance and estimate emissions at the site
Verify composition of materials	All site-specific gas or liquid analyses	Reports necessary to verify composition (including H_2S) at any point in the process. All analyses shall be representative of the worst case operating scenario (e.g. hottest period of summer). All analysis shall be performed within 180 days of initial start of operation or implementation of a change which requires registration, any time the character or composition of the streams change which may cause an increase in authorized emissions, or upon request of the appropriate Regional office or local air pollution control program with jurisdiction. Analysis techniques may include, but are not limited to, Gas Chromatography, Tutweiler, stain tube analysis, and sales oil/condensate reports. These records will document the following: (A) H2S content; (B) flow rate; (C) heat content; or (D) other characteristic including, but not limited to: (i) API gravity and Reid vapor pressure (RVP);(ii) sales oil; or (iii) condensate . Laboratory extended VOC GC analysis at a minimum to C10+ and H2S analysis for gas and liquids for the following shall be performed and used for emission compliance demonstrations:(A) Separator at the inlet; (B) Dehydration Unit prior to dehydrator; (C) Amine Unit prior to sweetening unit; (D) Tanks for liquids and vapors; and (E) Produced Water or Brine/Salt Water at the inlet prior to storage.
Combustion Devices	Initial Sampling of (i)Any engine greater than 500 horsepower; (ii) Any boiler, heater, or other combustion facility with greater than 40 MMBtu/hr heat input; or (iii) Any turbine	Perform stack sampling and other testing as required to establish the actual quantities of air contaminants being emitted into the atmosphere (including but not limited to NOx, CO, VOC, and O2. Engines greater than 500 hp shall also sample for formaldehyde. Each combustion facility shall be tested at a minimum of 50% of the design maximum firing rate of the facility. Each tested firing rate shall be identified in the sampling report. Sampling shall occur within 180 days after initial start-up of each unit. Additional sampling shall occur as requested by the TCEQ Regional Director.
Engines	Periodic Evaluation	(A) Conduct evaluations of each engine performance every calendar quarter after initial compliance testing by measuring the NO_x, CO, and O_2 content of the exhaust. Test shall occur more than 30 days apart. Individual engines shall be subject to quarterly performance evaluation if they were in operation for 500 hours or more during the three-month (quarterly) period. The performance of each engine shall be evaluated at a minimum once per year regardless of hours of operation. (B) The use of portable analyzers specifically designed for measuring the concentration of each contaminant in parts per million by volume is acceptable for these evaluations. The portable analyzer shall be operated in accordance with the EPA's, Office of Air Quality Planning and Standards, Emission Measurement Center Conditional Test Method - Determination of O_2, CO, and NO_x from Stationary Sources for Periodic Monitoring (Portable Electrochemical Analyzer Procedure) [CTM-034] (September 8, 1999). The NO_x and CO emissions then shall be converted into units of grams per horsepower-hour and pounds per hour. (C) Emissions shall be measured and recorded in the as-found operating condition, except no compliance determination shall be established during start-up, shutdown, or under breakdown conditions. After each occurrence of engine maintenance, such as major component replacement, overhaul, oxygen sensor replacement, or catalyst replacement, an evaluation of engine performance as described above shall be performed within two weeks. (D) In lieu of the above mentioned periodic monitoring for engines and biennial testing, the holder of this permit may install, calibrate, maintain, and operate a continuous emission monitoring system (CEMS) to measure and record the concentrations of NO_x and CO from any engine, turbine, or other external combustion facility. Diluents to be measured include O_2 or CO_2. Except for system breakdowns, repairs, calibration checks, zero and span adjustments, and other quality assurance tests, the CEMS shall be in continuous operation and shall record a minimum of four, and normally 60, approximately equally spaced data points for each full hour. The NO_x and diluents CEMS shall be operated according to the methods and procedures as set out in 40 CFR Part 60, Appendix B, Performance Specifications 2 and 3. The CO CEMS shall be

		operated according to the methods and procedures as set out in 40 CFR Part 60, Appendix B, Performance Specifications 4, 4A, or 4B. CEMS shall follow the quality assurance requirements of Appendix F except that Cylinder Gas Audits may be conducted in all four calendar quarters in lieu of the annual Relative Accuracy Test Audit. A CEMS with downtime due to breakdown or repair of more than 10% of the facility operating time for any calendar shall be considered as a defective CEMS and the CEMS shall be replaced within 2 weeks.
Combustion Devices	Biennial Testing Any engine greater than 500 horsepower or any turbine	Every two year period starting from the first Initial Compliance Testing, the following facilities shall be retested according to the procedures of the Initial Compliance Retesting shall occur within 90 days of the two year anniversary date of the Initial Compliance Testing. If a facility has been operated for less than 2000 hours during the two year period, it may skip the retesting requirement for that period. After biennial testing, any engine retested under the above requirements shall resume periodic evaluations within the next two calendar quarters.
Thermal Oxidizer	Initial Sampling and Monitoring for performance for VOC, Benzene, and H2S	Stack testing is required for VOC and benzene and, at Region's discretion, H2S and must be coordinated and approved. The TO must have proper monitoring and sampling ports installed in the vent stream and the exit to the combustion chamber, to monitor and test the unit simultaneously. The temperature and oxygen measurement devices shall reduce the temperature and oxygen concentration readings to an averaging period of 6 minutes or less and record it at that frequency. The temperature measurement device shall be installed, calibrated, and maintained according to accepted practice and the manufacturer's specifications. The device shall have an accuracy of the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5°C. The oxygen analyzer shall be zeroed and spanned daily and corrective action taken when the 24-hour span drift exceeds two times the amounts specified Performance Specification No. 3, 40 CFR Part 60, Appendix B. Zero and span is not required on weekends and plant holidays if instrument technicians are not normally scheduled on those days. The oxygen analyzer shall be quality-assured at least semiannually using cylinder gas audits (CGAs) in accordance with 40 CFR Part 60, Appendix F, Procedure 1, § 5.1.2, with the following exception: a relative accuracy test audit is not required once every four quarters (i.e., two successive semiannual CGAs may be conducted). An equivalent quality-assurance method approved by the TCEQ may also be used. Successive semiannual audits shall occur no closer than four months. Necessary corrective action shall be taken for all CGA exceedances of ±15 percent accuracy and any continuous emissions monitoring system downtime in excess of 5 percent of the incinerator operating time. These occurrences and corrective actions shall be reported to the appropriate TCEQ Regional Director on a quarterly basis. Supplemental stack concentration measurements may be required at the discretion of the appropriate TCEQ Regional Director. Quality assured or valid data of oxygen analyzer must be generated when the TO is operating except during the performance of a daily zero and span check. Loss of valid data due to periods of monitor break down, inaccurate data, repair, maintenance, or calibration may be exempted provided it does not exceed 5 percent of the time (in minutes) that the oxidizer operated over the previous rolling 12 month period. The measurements missed shall be estimated using engineering judgment and the methods used recorded.
Condensers	Initial Sampling	Effectiveness may require sampling or monitoring upon request by the TCEQ or local programs and is required in all cases where greater than 80% is claimed. Proper monitoring and sampling ports must be installed in the vent stream before and after the condenser. Stack testing shall occur during the worst-case period as specified by the Regional office, including consideration for high ambient temperature and humidity. Stack testing must be coordinated and approved with the Field Operations Division.

Table 6 Monitoring and Records Demonstrations

Category	Description	Record Information
Site Production or Collection	natural gas, oil, condensate, and water	Site inlet gas volume and sulfur concentration, daily gas/liquid production and load-out from tanks
Equipment and facility summary	Current process description	As-built plot plan with property line, off-site receptors, and all equipment on-site
Equipment specifications	Process units, tanks & equipment, vapor recovery units; flares; thermal oxidizers; and reboiler control devices (glycol, amine unit)	Volumes and pressures, material and compositions of process vessels to be depressured, purged or degassed and emptied for MSS, demonstrations that the control equipment is properly sized to handle the volumes, pressures, flows and/or emissions processed or controlled, and the manufacturer's or design engineers estimate of appropriate compliant ranges for parameters that need to be monitored.
Standardized Methods or Recommendations	Manufacturer or Company Practices	Operational specifications, recommended maintenance schedules, Best Management Practices (BMP), and any leak detection and repair (LDAR) program
Site LDAR Program	Details of fugitive component monitoring plan, and LDAR results, including QA, QC	(A) A monitoring program plan must be maintained that contains, at a minimum, the following information: (i) an accounting of all the fugitive components by type and service at the site with the total uncontrolled fugitive potential to emit estimate; (ii) identification of the components at the site that are required to be monitored with an instrument or are exempt with the justification, note the following can be used for this purpose: (a) piping and instrumentation diagram (PID); or (b) a written or electronic database.; (iii) the monitoring schedule for each component at the site with difficult-to-monitor and unsafe-to-monitor valves, as defined by Title 30 Texas Administrative Code Chapter 115 (30 TAC Chapter 115), identified and justified, note if an unsafe-to-monitor component is not considered safe to monitor within a calendar year, then it shall be monitored as soon as possible during safe-to-monitor times and a record of the plan to monitor shall be maintained; and (iv) the monitoring method that will be used (audio, visual, or olfactory means; Method 21; the Alternative Work Practice in 40 CFR §60.18(g) - (i)); (v) for components where instrument monitoring is used, information clarifying the adequacy of the instrument response; (vi) the plan for hydraulic or pressure testing or instrument monitoring new and reworked components. (B) Records must be maintained of all monitoring instrument calibrations. (C) Records must be maintained for all monitoring and inspection data collected for each component required to be monitored with a Method 21 portable analyzer. (D) Leaking components must be tagged and a leaking-components monitoring log must be maintained for all leaks greater than the applicable leak definition (i.e.10,000 ppmv, 2000 ppmv, or 500 ppmv) of VOC detected using Method 21, all leaks detected by AVO inspection, and all leaks found using Alternative Work Practice specified in 40 CFR §60.18(g)-(i). The log must contain, at a minimum, the following: (i) the method used to monitor the leaking component (audio, visual, or olfactory inspection; Method 21; or the Alternative Work Practice in 40 CFR §60.18(g) - (i)); (ii) the name of the process unit or other appropriate identifier where the component is located; (iii) the type (e.g., valve or seal) and tag identification of component; (iv) the results of the monitoring (in ppmv if a Method 21 portable analyzer was used); (v) the date the leaking component was discovered;(vi) the date that a first attempt at repair was made to a leaking component; (vii) the date that a leaking component is repaired; (viii) the date and instrument reading of the recheck procedure after a leaking component is repaired; and (ix) the leaks that cannot be repaired until turnaround and the date that the leaking component is placed on the shutdown list. (E) If the owner or operator is using the Alternative Work Practice specified in 40 CFR §60.18(g) - (i), the records required by 40 CFR §60.18(i)(4). (F) Any open-ended line or valve which is a repair or replacement not completed within 72 hours shall be monitored on a weekly basis except that a leak is defined as any VOC reading greater than background. The results of this weekly check and any corrective actions taken shall be recorded. (G) Audio, visual and olfactory inspections shall occur quarterly for BMP and at least weekly in concert with required instrument monitoring programs by operating personnel walk-through

		and be recorded. (H) A check of the reading for any pressure-sensing device to verify rupture disc integrity shall be performed weekly.
Minor Piping Changes	Addition or replacement of components	Records showing all replacements and additions, including summary of emission type and quantity and whether less than 0.01 tpy VOC.
Equipment Replacement	Like-Kind replacement	Records on equipment specifications and operations, including summary of emissions type and quantity.
Material Characteristics	natural gas, oil, condensate, and water	Any change in material composition or adjustment of parameters to any units which could result in an increase or change in character of emissions
Process Units	Glycol Dehydration Units	Records of Operational Monitoring and Testing Records
	Process Separators	Records of Operational Monitoring and Testing Records
	Oil/Water Separators	Records of Operational Monitoring and Testing Records
	Amine Units	Records of Operational Monitoring and Testing Records
Boilers, Reboilers, Heater-Treaters, and and Process Heaters	Combustion	Records of Operational Monitoring and Testing Records Records of the hours of operation of every combustion device and engines of any size by the use of a process monitor such as a run time meter. The owner or operator may choose to undergo testing and retesting at the most frequent intervals identified in Table 5 in lieu of installing a meter and recording the hours of operation
Internal Combustion Engines	Combustion	Records of Appropriate Operational Monitoring and Testing Records Records of the hours of operation of every combustion device and engines of any size by the use of a process monitor such as a run time meter. The owner or operator may choose to undergo testing and retesting at the most frequent intervals identified in Table 5 in lieu of installing a meter and recording the hours of operation. See fuel records below
Gas Fired Turbines	Combustion	Records of Appropriate Operational Monitoring and Testing Records Records of the hours of operation of every combustion device and engines of any size by the use of a process monitor such as a run time meter. The owner or operator may choose to undergo testing and retesting at the most frequent intervals identified in Table 5 in lieu of installing a meter and recording the hours of operation
Fuel Records	VOC and Sulfur Content	For each separate fuel gas use at the site, the fuel usage and VOC content if the VOC content was used in emission estimation. If field gas contains more than 1.5 grains (24 ppmv) of H_2S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions do not exceed limitations
Tanks/Vessels	Color/Exterior	Records demonstrating inspection and maintenance of paint color and vessel integrity. Tank ID number stenciled on the outside of the tank or vessel
Storage Tanks Loading	Each Loading Spot	Either: (A) an annual record of reevaluation of material loaded and a daily record of actual loading rates and amounts loaded to show the characteristics of the material loaded and the rate and amounts are below the amounts and levels represented in the registration; or (B) Maintain and update monthly an emissions record which includes calculated emissions of VOC from all loading operations over the previous rolling 12 month period. The record shall include the loading spot, control method used, quantity loaded in gallons, name of the liquid loaded, vapor molecular weight, liquid temperature in degrees Fahrenheit, liquid vapor pressure at the liquid temperature in psia, liquid throughput for the previous month and rolling 12 months to date. Records of VOC temperature are not required to be kept for liquids loaded from unheated tanks which receive liquids that are at or below ambient temperatures. Emissions shall be calculated using the TCEQ publication titled "Technical Guidance Package for Chemical Sources - Loading Operations." Note this would also apply to routine pump truck loading for regular material transport.

	Tank Trucks	Records of tank truck certifications and testing.
Truck Loading	All Types	(A) Prior to each liquid transfer, documentation indicating the identity of the liquid in the truck, the identity of the liquid being transferred, the liquid level, and type of transfer (submerged fill or vacuum truck). (B) At the end of each liquid transfer, a record of the liquid level
Cooling Tower and Heat Exchanger	Maintenance Repair	Records must be maintained of all monitoring data and equipment repairs.Water must be monitored monthly for VOC emissions using TCEQ Sampling Procedures Manual, Appendix P dated January 2003 or a later edition.
Alternate Operations	Planned MSS or other operational variations including control downtime	Records of redirection of vent streams during primary operational unit or control downtime, including associated alternate controls, releases and compliance with emission limitations.
Regular Blowdown and Planned MSS	Process Vessels and Equipment, directly and indirectly related to the production of natural gas and natural gas liquids	Records of the source and control where applicable of blowdowns or depressurization. Documentation shall be maintained of the locations and/or identifiers where the purge gas or steam enters the process equipment or storage vessel and the exit points for the purge gases. If the process equipment is purged with a gas, two system volumes of purge gas must have passed through the control device or controlled recovery system before the vent stream may be sampled to verify acceptable VOC concentration prior to uncontrolled venting.In addition to meeting all the requirements in Table 5, (A) Type of activity; (B) Time and duration of activity; (C) Reason and root cause for activity; (D) Control of activity; (E) Composition of emissions released; (F) Estimated emissions released; and (G) Records of monitored concentrations and QA/QC to allow equipment opening at 10,000ppmv or 10% of the LEL per the methods in Table 6; (H) Plant processes and procedures to prepare and execute planned and unplanned MSS.
Control Devices	Flare Monitoring	(A) The flare and pilot flame shall be continuously monitored by a thermocouple or an infrared monitor. The time, date, and duration of any loss of flare or pilot flame shall be recorded. Each monitoring device shall be accurate to, and shall be calibrated at a frequency in accordance with, the manufacturer's specifications. (B) If field gas contains more than 1.5 grains (24 ppmv) of H_2S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed emission limitations. (C) If equipped with monitors: (i) readings shall be taken at least once every 15 minutes and the average hourly values of the flow and composition shall be recorded each hour. The monitors shall be calibrated on an annual basis to meet the following accuracy specifications: the flow monitor shall be ±5.0%, temperature monitor shall be ±2.0% at absolute temperature, and pressure monitor shall be ±5.0 mm Hg; (D) If the stream composition is monitored: (i) calibration of the analyzer shall follow the procedures and requirements of Section 10.0 of 40 CFR Part 60, Appendix B, Performance Specification 9, as amended through October 17, 2000 (65 FR 61744), except that the multi-point calibration procedure in Section 10.1 of Performance Specification 9 shall be performed at least once every calendar quarter instead of once every month, and the mid-level calibration check procedure in Section 10.2 of Performance Specification 9 shall be performed at least once every calendar week instead of once every 24 hours. The calibration gases used for calibration procedures shall be in accordance with Section 7.1 of Performance Specification 9. Net heating value of the gas combusted in the flare shall be calculated according to the equation given in 40 CFR §60.18(f)(3) as amended through October 17, 2000 (65 FR 61744). (ii) If a calorimeter is used, the calorimeter shall be calibrated, installed, operated, and maintained, in accordance with manufacturer recommendations, to continuously measure and record the net heating value of the gas sent to the flare, in British thermal units/standard cubic foot of the gas. (iii) The monitors and analyzers shall operate at least 95% of the time when the flare is operational, averaged over a rolling 12 month period. Flared gas net heating value and actual exit velocity determined in accordance with 40 CFR §60.18(f)(4) shall be recorded at least once every 15

		minutes as appropriate. Hourly mass emission rates shall be determined and recorded using the above readings and used to demonstrate compliance with emission limitations.
Control Devices	Performance Monitoring	The flare pilot flame shall be continuously monitored by a thermocouple or an infrared monitor. The time, date, and duration of any loss of pilot flame shall be recorded. Each monitoring device shall be accurate to, and shall be calibrated at a frequency in accordance with, the manufacturer's specifications. VCUs shall be monitored with the same parameters and requirements noted for flares or they may be monitored for temperature past the combustion zone as specified for thermal oxidizers.
Control Devices	Thermal Oxidizers Performance Monitoring	Records of the stack testing and appropriate temperature and flow conditions. The TO exhaust temperature and oxygen concentration shall be continuously monitored and recorded when waste gas is directed to the oxidizer. See fuel records above.
Control Devices	Condensers	Records of the stack testing and appropriate temperature and flow conditions. Continuously monitor and record temperature of exhaust.

PROPOSED STANDARD PERMIT

Air Quality Standard Permit for Oil and Gas Production Sites

(a) **Applicability**. This standard permit applies to all facilities or groups of facilities at a site which handle gases and liquids associated with the production, conditioning, processing, and pipeline transfer of fluids or gases found in geologic formations on or beneath the earth's surface including, but not limited to, crude oil, natural gas, condensate, and produced water.

(1) Only one Air Quality Standard Permit for Oil and Gas Production Sites may be registered for each site and authorizes facilities in sweet or sour service.

(2) This standard permit does not relieve the owner or operator from complying with any other applicable provision of the Texas Health and Safety Code, Texas Water Code, rules of the Texas Commission on Environmental Quality (TCEQ), or any additional state or federal regulations. Emissions that exceed the limits in this standard permit are not authorized and are violations of the standard permit.

(3) Emissions from upsets, emergencies, or malfunctions are not authorized by this standard permit.

(b) **Definitions.**

(1) Oil and Gas Site (OGS) – is defined as follows:

(A) For purposes of determining applicability of 30 TAC § 122, relating to Federal Operating Permits, site includes:
(i) The aggregation of all oil and gas facilities designated under same 2-digit standard industrial classification (SIC) codes;
(ii) Facilities located within at least 1/4 mile from each other on contiguous or adjacent properties under common control; and
(iii) Fugitives shall not be considered.

(B) For purposes of determining compliance with this standard permit's hourly and annual emission limits, site includes:
(i) The aggregation of all oil and gas facilities;
(ii) Facilities located within a 1/4 mile on contiguous or adjacent properties under common control; and
(iii) Fugitive emission sources must be included.

(2) Existing OGS - Existing facilities, groups of facilities, or any combination of facilities and sources at a site that has authorized oil and gas production facilities or groups of facilities which otherwise does not meet de minimis criteria for

pipelines and isolation valves as established through 30 TAC §116.119, De Minimis Facilities or Sources.

(3) Facility – a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A well test lasting less than 72 hours is not a facility.

(4) Receptor – For this standard permit, receptor includes any building which was in use as a single or multi-family residence, school, or place of worship at the time this standard permit is registered. A residence is a structure primarily used as a permanent dwelling. This term does not include structures occupied or used solely by the owner of the OGS facility or the owner of the property (if leaseholder) upon which the OGS facility is located. All measurements of distance to receptors shall be taken from the point on the OGS facility that is nearest to the residence, school, or place of worship toward the point on the building in use as a residence, school, or place of worship that is nearest to the OGS facility.

(c) **Authorized Facilities, Changes and Activities.**

(1) For existing OGS which are authorized by previous versions of this standard permit:

(A) Addition of new facilities, or changes to existing OGS, which increases the potential to emit, production processing capacity, or any increase in emissions over previously registered representations requires the following:

(i) re-authorization of the site under this standard permit.

(ii) In lieu of claiming, registering, or certifying the existing OGS with the proposed changes under this standard permit, the incremental emissions increases may be authorized by 30 TAC §106.261-262 relating to Facilities (Emission Limitations) and Facilities (Emissions and Distance Limitations) if the maximum worst-case emissions also meet the limitations established by Emission Limit Tables 1-4 in subsection (l) of this standard permit for all air contaminants with proposed increases.

(iii) If all applicable requirements of this standard permit cannot be met, prior to the construction of new facilities or implementing the change, the OGS must obtain authorization under 30 TAC §106.352, Oil and Gas Production Sites, or permit under 30 TAC §116.111, General Application

(iv) Facility information shall be incorporated at the next revision or update to a registration or certification under this standard permit.

(B) Additions of piping and fugitive components that increases emissions less than or equal 0.1 ton per year (tpy) of volatile organic compounds (VOC) and do not otherwise increase the potential to emit, or production processing capacity are authorized and must meet only the applicable best management practices (BMP) requirements of subsection (e) of this standard permit. This information shall be incorporated at the next revision or update to a registration under this standard permit.

(C) Replacement of any facility is authorized and must meet only the applicable BMP requirements of subsection (e) of this standard permit if all of the following are met:

(i) The replacement facility must have the same or less capacity, horsepower, production, function;

(ii) The replacement facility meets design, performance and requirements as established in the Air Quality Standard Permit for Oil and Gas Production Sites Tables 8-10 relating to Best Available Control Technology;

(iii) The replacement facility does not increase the previously registered or certified emissions, potential to emit, or production processing capacity;

(iv) The replacement facility does not exceed the thresholds for major source or major modification as defined in 30 TAC §116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions, and in Federal Clean Air Act §112(g) or §112(j);

(v) The replacement facility complies with all applicable Title 40, Code of Federal Regulations (40 CFR), Parts 60 and 63 requirements for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and Maximum Achievable Control Technology (MACT); and

(vi) Facility information shall be incorporated at the next revision or update to a registration or certification under this section.

(D) If there are no changes or additions to the site, the following apply:

(i) On or after January 5, 2012, emissions from planned maintenance, startup, and shutdown (MSS) must meet the requirements of subsections (i) - (l) of this standard permit. Prior to January 5, 2012 OGS authorized under previous version of this standard permit may voluntarily authorize planned MSS emissions under this standard permit. The air contaminants which must demonstrate compliance with hourly limits include: condensate, crude oil, natural gas, benzene, and hydrogen sulfide (H_2S). Emissions of benzene must also meet annual limits. Records of these activities must meet the requirements in subsection (j) of this standard permit. Planned MSS information shall be incorporated at the next revision or renewal to a registration under this standard permit.

(ii) The authorization to operate under the standard permit must be renewed in accordance with 30 TAC §116.604, Duration and Renewal of Registrations to Use Standard Permits. As of January 1, 2015, upon renewal, the owner or operator of a facility will be required to be in compliance with all requirements of this standard permit as required by 30 TAC §116.605, Standard Permit Amendment and Revocation.

(2) All facilities related to the operation of any OGS, under any version of this standard permit (or co-located at a site with an OGS standard permit) and previously authorized by, and continuing to meet the conditions of a permit by rule under 30 TAC, Chapter 106, Permits by Rule (or any historical version) must:

(A) Be incorporated into this standard permit in any registration, revision, or renewal for this standard permit. These facilities will become authorized by this standard permit and previous authorizations will be voided.

(B) Meet all emission limits established by Tables 1-4 as listed in subsections (k) - (l) of this standard permit.

(C) Meet requirements of subsections (e), (i), and (j) for BMP, Planned MSS, and associated Records, Sampling and Monitoring of this standard permit.

(D) These facilities and groups of facilities are not required to meet the BACT Tables 8-10 listed in subsection (l) of this standard permit unless they are changed in such a way as to increase the potential to emit, production processing capacity, or certified emission rate.

(3) The executive director shall perform a compliance history review in accordance with 30 TAC Chapter 60. The executive director may not issue a registration under this standard permit if an applicant is a poor performer. In addition, the Executive Director may deny an application for registration under this standard permit for good cause.

(d) Facilities, Changes, and Activities Not Authorized. The following are not authorized under this standard permit:

(1) Any site claiming this standard permit cannot also authorize any new facility, or changes to an existing facility, which handle (or is related to the processing of) crude oil, condensate, natural gas, or any other petroleum raw material, product or by-product under any 30 TAC Chapter 106 authorizations for oil and gas production-related facilities or permit under 30 TAC §116.111,General Application.

(2) Any site with a permit under 30 TAC §116.111 cannot also register under this standard permit for any new facility, or changes to an existing facility, which handle (or is related to the processing of) crude oil, condensate, natural gas, or any other petroleum raw material, product or by-product;

(3) Sour water strippers or sulfur recovery units;

(4) Carbon dioxide hot carbonate processing units;

(5) Water injection facilities;

(6) Liquefied Petroleum Gases (LPG), crude oil, or condensate transfer or loading into or from railcars, ships, or barges;

(7) Incinerators for solid waste destruction;

(8) Remediation of petroleum contaminated water and soil;

(9) Underground storage of natural gas and the associated surface support facilities;

(10) Any emission increases in an Air Pollutant Watch List area for one or more applicable Air Pollutant Watch List contaminants designated for that area; and

(11) Except for the activities described in subsection (i)(4) of this standard permit, unplanned MSS activities and emission events as defined in 30 TAC §101.1, Definitions.

(e) **Best Management Practices (BMP).** For any facility, group of facilities, emission control equipment or site using this standard permit, the following BMP shall apply:

(1) All facilities which have the potential to emit air contaminants must be maintained in good working order and operated properly during facility operations;

(2) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve to seal the line so that no leakage of emissions occurs. If equipped with a second valve, both valves shall be closed except during sampling.

(3) Open-topped tanks or ponds containing VOCs or H_2S are not permitted;

(4) Tank hatches and valves which emit to the atmosphere shall remain closed except for sampling or planned maintenance activities. All pressure relief devices (PRD) shall be designed and operated to ensure that proper pressure in the vessel is maintained and shall stay closed except in upset or malfunction conditions. If the PRD does not automatically reset, it must be reset within 24 hours at a manned site and within 1 week if located at an unmanned site;

(5) All seals and gaskets in VOC or H_2S service shall be installed, checked, and properly maintained to prevent leaking;

(6) Maintenance of facilities shall follow manufacturer's specifications and recommended programs when available. In the absence of manufacturer's recommended programs, each site shall establish and maintain a program to replace, repair, and/or maintain facilities to keep them in good working order. Replacement and repair of equipment shall follow these established programs;

(7) Fugitive components and instrumentation in gas or liquid service at the site which are not otherwise subject to a leak detection and repair (LDAR) program, with the uncontrolled potential to emit equal to or greater than 5 tpy VOC or 0.1 tpy H_2S shall comply with the following:

(A) Be inspected at least quarterly by audio, visual, and olfactory (AVO) observations;

(B) Be inspected annually using EPA Test Method 21, with a portable analyzer set at 10,000 parts per million by volume (ppmv), leak detection limit. In lieu of the portable analyzer, the owner or operator may use the Alternative Work Practice in 40 CFR §60.18(g) - (i) to perform inspections with the following provisions:

(i) The monitoring frequency using an optical gas imaging instrument and the Alternative Work Practice must be at least once

per quarter.

(ii) The optical gas imaging instrument must have a detection sensitivity level of no greater than 60 grams per hour.

(iii) The annual Test Method 21 requirement in 40 CFR §60.18(h)(7) and the reporting requirement in 40 CFR §60.18(i)(5) do not apply.

(C) Damaged or leaking valves, connectors, pumps, compressors, and agitator seals found to be emitting VOCs in excess of 10,000 ppmv as determined using a portable analyzer, found by AVO inspection to be leaking (e.g., dripping process fluids), or found leaking using the Alternative Work Practice shall be tagged and replaced or repaired;

(D) Every reasonable effort shall be made to repair a leaking component within 30-days after the leak is found. If the repair of a component would require a unit shutdown, which would create more emissions than the repair would eliminate, the repair may be delayed until the next planned shutdown; and

(E) To the extent that good engineering practices will permit, new and reworked valves and piping connections shall be located in a place that is reasonably accessible for leak-checking during plant operation.

(f) **General Requirements** All facilities under this standard permit shall meet the following specifications, design, and control requirements:

(1) Any OGS facility shall be operated at least fifty (50) feet from any property-line or receptor, whichever is closer to the facility. This distance limitation does not apply to the following:

(A) Any OGS facility at a location for which the distance requirements were satisfied at the time this standard permit is claimed, registered, or certified (provided that the authorization was maintained) regardless of whether a receptor is subsequently built or put to use fifty (50) feet from any OGS facility; or

(B) Existing, immovable, fixed OGS facilities which were constructed and previously authorized, even if modified.

(2) Uncontrolled venting of H_2S emissions equal to or greater than 24 ppmv is not allowed. During production or planned MSS conditions, all vent streams containing more than 24 ppmv H_2S shall be routed to a thermal control device with at least 98% destruction effectiveness. During emergency or upset conditions, all vent streams containing more than 24 ppmv H_2S shall be sent

to a flare or thermal oxidizer. Emergency and upset conditions are not authorized by this standard permit and shall be handled and reported according to the requirements of 30 TAC Chapter 101, Subchapter F, Division 1, Emissions Events. It is not permissible under any conditions to vent acid gases directly to the atmosphere.

(3) All new facilities or new activities authorized by this standard permit shall meet the design, capture or emission control requirements as listed on Tables 7-9 of this standard permit.

(4) All changes to existing facilities which have the potential to increase emissions (including representations of production and planned MSS activities) authorized by this standard permit shall meet the design, capture or emission control requirements as listed on Tables 7-9 of this standard permit.

(5) This standard permit supersedes the emissions limits of 30 TAC §116.610(a)(1), Applicability. The emissions from all equipment in any service (production and planned MSS) must meet the most stringent and applicable of limits of Emissions Tables 1-4 of this standard permit. The air contaminants, which must demonstrate compliance with hourly limits, include condensate, crude oil, natural gas, benzene, H_2S, sulfur dioxide (SO_2), and NO_x. Emissions of benzene must also meet annual limits.

(g) **Registration**

(1) This standard permit supersedes the notification requirements of 30 TAC §116.615, General Conditions. Any claim under this standard permit must comply with all applicable requirements of 30 TAC §116.610; §116.611, Registration Requirements; §116.614, Standard Permit Fees; and §116.615 and be submitted to the commission through a PI-1-S Standard Permit Registration Form.

(2) Construction of new facilities, which have the potential to increase emissions at the OGS, must register for this standard permit prior to construction or operational changes being implemented.

(3) Changes or modifications at existing authorized facilities, which have the potential to increase emissions or change the character of emissions, require registration no later than 30 days after the change is implemented.

(4) If the registration is for a new site, new facilities at an existing site or other changes which has the potential to increase emissions, emission estimates must be updated and recorded for site- or facility-specific data (including, but not limited to, sampling data) within 180 days from start of operation or implemented changes.

(5) Any registrations under this standard permit are subject to the requirements of 30 TAC Chapter 60 of this title, relating to Compliance History.

(h) **Exceptions to Registration and Fee Requirements.**

(1) Registration and fee requirements do not apply when additions of piping and fugitive components are less than or equal to 0.1 tpy VOC or in-kind replacement of existing facilities occur as described in (c)(1)(B)-(C) of this standard permit.

(2) Fee requirements do not apply when there are changes in representations with no increase in emissions within 6-months after a standard permit registration has been issued.

(i) **Planned Maintenance, Start-ups and Shutdowns (MSS).** For any facility, group of facilities or site using this standard permit, the following shall apply:

(1) After January 5, 2012, all emissions from planned MSS activities and facilities must be considered for compliance with applicable site-wide limits of this standard permit. Prior to January 5, 2012 representations and registration of planned MSS is voluntary, but if represented must meet the applicable site-wide limits of this standard permit.

(2) All releases of air contaminants during, or as result of, planned MSS must be quantified and meet the emission limits using Tables 1-4 in subsections (k) - (l) of this standard permit as applicable. The air contaminants which must demonstrate compliance with hourly limits, include: condensate, crude oil, natural gas, benzene, H_2S, SO_2, and NO_x. Emissions of benzene must also meet annual limits. This analysis must include:

(A) Alternate operational scenarios or redirection of vent streams;

(B) Pigging, purging, and blowdowns;

(C) Temporary facilities meeting 30 TAC §106.263(e), Routine Maintenance, Start-up and Shutdown of Facilities and Temporary Maintenance Facilities if used for degassing or purging of tanks, vessels, or other facilities;

(D) Degassing or purging of tanks, vessels, or other facilities;

(E) Turbine hot section swaps;

(F) Management of sludge from pits, ponds, sumps, and water conveyances;

(G) Natural gas instrumentation/analyzer maintenance;

(H) Meter proving;

(I) Amine and other treatment chemicals replacement (except glycols); and

(J) Hot oil treatments.

(3) Other MSS activities authorized by this standard permit are limited to the following. These planned MSS activities require recordkeeping, but no emissions quantification unless specifically requested by the Executive Director:

(A) Routine engine component maintenance including filter changes, oxygen sensor replacements, compression checks, overhauls, lubricant changes, spark plug changes, and emission control system maintenance in combination with any other activities allowed in this subsection;

(B) Boiler refractory replacements and cleanings;

(C) Heater and heat exchanger cleanings;

(D) Lubrication oil level checks;

(E) Amine filter replacements;

(F) Glycol draining and refilling;

(G) Pump, compressor, heat exchanger, vessel, water treatment systems (cooling, boiler, potable), and fugitive component maintenance;

(H) Use of aerosol cans, Soap and other aqueous based cleaners; and

(I) Pressure relief valve testing, calibration of analytical equipment; instrumentation/analyzer maintenance; Replacement of analyzer filters and screens; and cleaning sight glasses.

(4) Engine/compressor set start-ups associated with preventative system shutdown activities may be authorized as part of typical operations for an OGS if:

(A) Prior to operation, alternative operating scenarios to divert gas or liquid streams are registered and certified with all supporting documentation; and

(B) Engine/compressor shutdowns shall not result in emissions

(C) Emissions which result from the subsequent compressor start-up activities are controlled to a minimum of 98% efficiency for VOC and H2S.

(j) **Records, Sampling and Monitoring.** The following records shall be maintained at a site in written or electronic form and be readily available to the agency or local air pollution control program with jurisdiction upon request. All required records must be kept at the facility site. If however, the facility normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the plant site.

(1) Sampling and demonstrations of compliance shall include the requirements listed in Table 5 in subsection (l) of this standard permit.

(2) Monitoring and Records for demonstrations of compliance shall include the requirements listed in Table 6 in subsection (l) of this standard permit.

(k) Emission Table Uses Based on Impacts Evaluation. The following requirements apply to Tables 1-4 listed in subsection (l) of this standard permit.

(1) Tables 1-4 must be used for determining allowable site-wide pound per hour (lb/hr) and ton per year (tpy) emissions from production and planned MSS operations at any proposed or existing OGS claiming this standard permit.

(2) All emissions estimates must be based on worst-case operations.

(3) For each facility or group of facilities, the smallest corresponding distance from any emission point, vent, or fugitive component to the nearest receptor must be used with the appropriate Table for compliance determination with the published Effects Screening Levels (ESLs) as found through the current list at:
http://www.tceq.state.tx.us/implementation/tox/esl/list_main.html#esl_1 .

(4) For each facility or group of facilities, the smallest corresponding distance from any emission point, vent, or fugitive component to the nearest property line must be used with the appropriate Table for compliance determination with any applicable state and federal ambient air quality standard.

(5) The most appropriate character of VOC must be used for each emission release point at the site. If all applicable VOCs are not evaluated, the most restrictive ESL, most conservative dispersion parameters, closest distance, and lowest release heights shall be used to determine maximum acceptable emissions;

(6) Formaldehyde emissions need to be evaluated for Engines and Turbines only.

(7) Linear interpolation between height and distance points may be used with the tables; however a distance of less than 50 feet or greater than 5500 feet may not be

used. If distances and release heights are not interpolated, the next lowest height and lesser distances shall be used for determination of maximum acceptable emissions.

(8) The tables shall be used with the equations in either (A) or (B):

(A) For single releases or co-located groups of similar releases the following equations can be used:

(i) For an ambient air standards hourly emissions are determined by:

$$E_{MAX} = P/G$$

where E_{MAX} = maximum hourly (lb/hr) emissions acceptable
P = property line standard ($\mu g/m^3$)
G = the most stringent of any applicable generic value from the Tables at the emission point's release height and distance to property line ([$\mu g/m^3$]/[lb/hr])

(ii) For health effects review hourly emissions are determined by:

$$E_{MAX} = ESL/G$$

where E_{MAX} = maximum hourly (lb/hr) emissions acceptable
ESL = current published effects screening level for the specific air contaminant ($\mu g/m^3$)
G = the most stringent of any applicable generic value from the Tables at the emission point's release height and distance to receptor ([$\mu g/m^3$]/[lb/hr])

(iii) For health effects review annual emissions are determined by:

$$E_{MAX} = (8760/2000)\ ESL/(0.08*G)$$

where E_{MAX} = maximum annual (tpy) emissions acceptable
ESL = current published effects screening level for the specific air contaminant ($\mu g/m^3$)
G = the most stringent of any applicable generic value from the Tables at the emission point's release height and distance to receptor ([$\mu g/m^3$]/[lb/hr])

(B) The weighted fraction of all emission points at the site may be used to demonstrate compliance. If weighted ratios are not used, the total quantity of emissions shall be assumed to be released from the most conservative applicable G value at the site using (A). For all simultaneous releases, the weighted fractions are determined by:

(i) For ambient standard and health effects review, hourly emissions are determined by:

$$E_{MAX}\ (lb/hr) = (WR\ EPN\ 1)\ (P / G\ EPN\ 1) + (WR\ EPN\ 2)\ (P / G\ EPN\ 2) + \ldots$$

or

$$E_{MAX}\ (lb/hr) = (WR\ EPN\ 1)\ (ESL / G\ EPN\ 1) + (WR\ EPN\ 2)\ (ESL / G\ EPN\ 2) + \ldots$$

where E_{MAX} = maximum hourly acceptable emissions (lb/hr)
WR EPN(x)= Weighted ratio of emissions for each EPN divided by the sum of total Emissions for all EPNs that emit that contaminant or ($E_{EPN\ x}/E_{total}$)
P = 1-hour property line standard ($\mu g/m^3$)
ESL = current published 1-hour effects screening level for specific air contaminant ($\mu g/m^3$)
G = value from the Tables at the emission point's release height and distance to property line or receptor, as appropriate ([$\mu g/m^3$]/[lb/hr]).

(ii) For ambient standard and health effects review, annual emissions are determined by:

$$E_{MAX}\ (tpy) = (8760/2000)\ \{(WR\ EPN\ 1)\ (P / [0.08 * G\ EPN\ 1]) + (WR\ EPN\ 2)\ (P / [0.08 * G\ EPN\ 2]) + \ldots\}$$

or

$$E_{MAX}\ (tpy) = (8760/2000)\ \{(WR\ EPN\ 1)\ (ESL / [0.08 * G\ EPN\ 1]) + (WR\ EPN\ 2)\ (ESL / [0.08 * G\ EPN\ 2]) + \ldots\}$$

where E_{MAX} = maximum annual acceptable emissions (tpy)
WR EPN(x)= Weighted ratio of emissions for each EPN divided by the sum of total Emissions for all EPNs that emit that contaminant or ($E_{EPN\ x}/E_{total}$)
P = 1-hour property line standard ($\mu g/m^3$)
ESL = current published annual effects screening level for specific air contaminant ($\mu g/m^3$)
G = value from the Tables at the emission point's release height and distance to property line or receptor, as appropriate ([$\mu g/m^3$]/[lb/hr]).

(l) The following Tables shall be used as required in subsections (a)-(k) of this standard permit.

Table 1. Generic Modeling Results for Fugitives & Process Vents

Distance (feet)	Fugitive (µg/m³)/(lb/hr)	10 ft Vent (µg/m³)/(lb/hr)	20 ft Vent (µg/m³)/(lb/hr)	30 ft Vent (µg/m³)/(lb/hr)	40 ft Vent (µg/m³)/(lb/hr)	50 ft Vent (µg/m³)/(lb/hr)	60 ft Vent (µg/m³)/(lb/hr)
50	1467	469	168	90	70	65	28
100	1467	469	168	90	70	65	28
150	1393	469	168	90	70	65	28
200	1225	440	168	90	70	65	28
300	921	412	168	90	70	65	28
400	710	319	168	90	70	65	28
500	566	243	157	90	70	65	28
600	462	189	138	89	70	65	28
700	384	150	120	88	70	65	28
800	325	124	105	85	70	65	28
900	278	105	93	81	70	65	28
1000	241	91	84	77	69	65	26
1100	211	90	77	72	67	63	25
1200	186	89	70	68	64	61	24
1300	165	88	65	64	61	58	24
1400	148	87	61	60	58	55	24
1500	133	84	57	57	55	53	24
1600	121	82	54	53	52	50	23
1700	110	79	51	51	49	47	23
1800	101	76	50	48	47	45	22
1900	93	73	49	46	44	43	22
2000	86	70	49	44	42	41	21
2100	79	67	48	42	41	39	21
2200	73	64	47	40	39	38	20
2300	68	61	46	39	37	36	19
2400	64	59	45	37	36	35	19
2500	60	56	43	36	35	34	18
2600	57	54	42	34	33	32	18
2700	54	52	41	33	32	31	17
2800	51	50	40	32	31	30	17
2900	48	48	39	31	30	29	16
3000	46	46	37	30	29	28	16
3500	36	38	32	26	25	25	14
4000	30	32	28	24	23	22	12
4500	25	28	25	21	20	20	11
5000	21	24	22	19	18	18	10
5500	18	21	19	17	17	16	9

Table 2. Generic Modeling Results for Engines and Turbines

Distance	concentration per 1 pound/hour of emissions {(µg/m³)/(lb/hr)}										
(ft)	8 ft	10 ft	12 ft	14 ft	16ft	18ft	20 ft	25 ft	30 ft	35 ft	40 ft
50	60	59	54	50	43	35	34	25	21	20	19
100	60	59	54	50	43	35	34	25	21	20	19
150	60	59	54	50	43	35	34	25	21	20	19
200	60	59	54	50	43	35	34	25	21	20	19
300	60	59	54	50	43	35	34	25	21	20	19
400	60	59	54	50	43	35	34	25	21	20	19
500	60	59	54	50	43	35	34	25	21	20	19
600	57	57	52	48	41	34	34	25	21	20	19
700	52	52	47	44	38	31	31	25	21	20	19
800	47	47	43	40	34	28	28	24	21	20	19
900	45	42	39	36	31	26	26	23	21	20	19
1000	44	39	37	33	28	26	25	23	20	20	19
1100	42	36	36	30	26	25	25	23	20	19	19
1200	40	35	35	28	25	25	24	23	20	19	18
1300	38	34	34	26	24	23	23	23	20	19	17
1400	36	32	32	24	24	23	23	23	20	19	17
1500	34	31	31	24	23	23	23	23	20	19	16
1600	32	29	29	23	23	23	23	23	19	19	16
1700	30	28	28	23	23	23	22	22	19	18	16
1800	29	27	27	22	22	22	22	22	19	18	16
1900	28	25	25	22	22	22	22	21	18	17	16
2000	26	24	24	22	22	22	22	21	17	17	16
2100	25	23	23	21	21	21	21	20	17	16	15
2200	24	22	22	21	21	21	21	19	17	16	15
2300	23	21	21	20	20	20	20	19	16	16	15
2400	22	21	21	20	20	20	20	18	16	16	15
2500	22	20	20	19	19	19	19	18	16	15	15
2600	21	19	19	19	19	19	19	17	16	15	14
2700	20	18	18	18	18	18	18	17	15	15	14
2800	19	18	18	18	18	18	18	16	15	15	14
2900	19	18	18	17	17	17	17	16	15	14	14
3000	18	17	17	17	17	17	17	15	15	14	13
3500	16	15	15	15	15	15	15	14	13	13	12
4000	14	13	13	13	13	13	13	12	12	11	11
4500	13	12	12	12	12	12	12	11	10	10	10
5000	11	11	11	11	11	11	11	10	10	9	9
5500	11	10	10	10	10	10	10	9	9	9	8

Table 3. Generic Modeling Results for Flares

	Concentration per 1 pound/hour of emissions {(µg/m³)/(lb/hr)}				
Distance (ft)	20 ft height	30 ft height	40 ft height	50 ft height	60 ft height
50	58	43	26	25	23
100	58	43	26	25	23
150	58	43	26	25	23
200	58	43	26	25	23
300	58	43	26	25	23
400	58	43	26	25	23
500	58	43	26	25	23
600	56	43	26	25	23
700	52	43	26	25	23
800	47	43	26	25	23
900	45	43	26	25	23
1000	44	43	26	25	23
1100	42	41	25	24	23
1200	40	40	24	24	22
1300	38	38	23	23	21
1400	36	36	23	21	21
1500	34	34	23	21	20
1600	32	32	22	21	20
1700	31	31	22	21	20
1800	29	29	22	20	20
1900	28	28	22	20	20
2000	26	26	21	20	19
2100	25	25	21	20	19
2200	24	24	20	20	19
2300	23	23	20	19	19
2400	22	22	20	19	18
2500	22	22	19	18	18
2600	21	21	19	18	17
2700	20	20	18	17	17
2800	19	19	18	17	16
2900	19	19	17	16	16
3000	18	18	17	16	16
3500	16	16	15	14	14
4000	14	14	13	12	12
4500	13	13	12	11	11
5000	11	11	11	10	10
5500	11	11	10	9	9

Table 4. Generic Modeling Results for Blowdowns & Gas Pipeline Purging

Distance (feet)	Blowdowns			Purging		
	concentration per 1 pound/hour of emissions {(µg/m³)/(lb/hr)}					
	3 ft Height	10 ft height	20 ft height	3 ft height	10 ft height	20 ft height
50	4304	791	244	2203	536	191
100	4304	791	244	2203	536	191
150	4250	777	244	2127	536	191
200	3621	763	244	2025	534	191
300	2367	750	225	1692	532	188
400	1607	737	225	1295	516	185
500	1156	671	224	993	500	180
600	871	581	218	777	466	177
700	682	498	212	624	418	174
800	551	427	210	513	370	170
900	456	368	204	429	327	167
1000	384	320	194	365	290	164
1100	328	281	182	314	258	158
1200	284	248	170	274	230	150
1300	249	221	159	241	207	141
1400	220	198	147	214	187	133
1500	196	178	137	191	169	125
1600	176	162	127	172	154	117
1700	159	147	118	156	141	110
1800	145	135	110	142	129	103
1900	132	124	103	130	119	97
2000	121	114	96	119	110	91
2100	112	106	90	110	102	86
2200	103	98	85	102	95	81
2300	96	91	80	95	89	76
2400	90	86	75	89	84	72
2500	84	81	71	83	79	68
2600	79	76	68	78	74	65
2700	74	72	64	74	70	62
2800	70	68	61	70	66	59
2900	67	64	58	66	63	56
3000	63	61	55	62	60	54
3500	50	48	45	49	47	43
4000	40	39	37	40	39	36
4500	34	33	31	33	33	31
5000	29	28	27	28	28	26
5500	25	24	23	25	24	23

Table 5 Sampling and Demonstrations of Compliance

Category	Description	Specifications and Expectations
Sampling	When Applicable	(A)Sampling ports and platforms shall be incorporated into the design of all exhaust stacks according to the specifications set forth in "Chapter 2, Stack Sampling Facilities." The sampling point shall be upstream of the inlet to the control device or controlled recovery system. The sample ports and the collection system must be designed and operated such that there is no air leakage into the sample probe or the collection system downstream of the process equipment or vessel being purged. Alternate sampling facility designs may be submitted for written approval by the TCEQ Regional Director or his designee. (B) Sampling shall be conducted in accordance with the appropriate procedures of the TCEQ Sampling Procedures Manual and in accordance with the appropriate EPA Reference Methods. Sampling shall occur as three one-hour test runs and then averaged to demonstrate compliance with the limits of this standard permit. Any deviations from those procedures must be approved in writing by the TCEQ Regional Director or his designee prior to sampling. (C) The TCEQ Regional Office shall be afforded the opportunity to observe all such sampling. (D) The holder of this authorization is responsible for providing sampling and testing facilities and conducting the sampling and testing operations at his expense. (E) The TCEQ Regional Office that has jurisdiction over the site shall be contacted as soon as testing is scheduled, but not less than 30 days prior to sampling to schedule a pretest meeting. The notice shall include: (i) Date for pretest meeting; (ii)Date sampling will occur; (iii) Name of firm conducting sampling; (iv) Type of sampling equipment to be used; (v) Method or procedure to be used in sampling; (vi)Procedure used to determine firing rates during the sampling period. The purpose of the pretest meeting is to review the necessary sampling and testing procedures, to provide the proper data forms for recording pertinent data, and to review the format procedures for submitting the test reports. (F) Within 60 days after the completion of the testing and sampling required herein, one copy of the sampling reports shall be sent to the TCEQ Regional Office and Austin Central Records.
Control Devices	Flares	Proper sampling and monitoring ports must be included in the vent stream to allow for simultaneous monitoring and testing. The flow monitor sensor and analyzer sample points shall be installed in the vent stream as near as possible to the flare inlet such that the total vent stream to the flare is measured and analyzed.
fugitive component monitoring and repair program or LDAR	testing of the new and reworked piping connections	Gas or hydraulic testing at no less than operating pressure shall be performed prior to returning the components to service or they shall be monitored for leaks using an approved gas analyzer within 8 hours of the components being returned to service. Adjustments shall be made as necessary to obtain leak-free performance.
Fugitives and LDAR	Analyzers	An approved gas analyzer or other approved detection monitoring device used for the VOC fugitive inspection and repair requirement is a device that conforms to the requirements listed in Title 40 CFR §60.485(a) and (b), or is otherwise approved by the EPA as a device to monitor for VOC fugitive emission leaks. Approved gas analyzers shall conform to requirements listed in Method 21 of 40 CFR Part 60, Appendix A. The gas analyzer shall be calibrated with methane. In addition, the response factor of the instrument for a specific VOC of interest shall be determined and meet the requirements of Section 8 of Method 21. If a mixture of VOCs is being monitored, the response factor shall be calculated for the average composition of the process fluid. If a response factor less than 10 cannot be achieved using methane, then the instrument may be calibrated with one of the VOC to be measured or any other VOC so long as the instrument has a response factor of less than 10 for each of the VOC to be measured. In lieu of using a hydrocarbon gas analyzer and EPA Method 21, the owner or operator may use the Alternative Work Practice in 40 Code of Federal Regulations Part 60, §60.18(g) - (i). The optical gas imaging instrument must meet all requirements specified in 40 CFR §60.18(g) - (i), except as specified in subsection (e)(7) of this standard permit for Best Management Practices.

Verify composition of materials	All site-specific gas or liquid analyses	Reports necessary to verify composition (including H_2S) at any point in the process. All analyses shall be representative of the worst case operating scenario (e.g. hottest period of summer). All analysis shall be performed within 180 days of initial start of operation or implementation of a change which requires registration, any time the character or composition of the streams change which may cause an increase in authorized emissions, or upon request of the appropriate Regional office or local air pollution control program with jurisdiction. Analysis techniques may include, but are not limited to, Gas Chromatography, Tutweiler, stain tube analysis, and sales oil/condensate reports. These records will document the following: (A) H2S content; (B) flow rate; (C) heat content; or (D) other characteristic including, but not limited to: (i) API gravity and Reid vapor pressure (RVP);(ii) sales oil; or (iii) condensate . Laboratory extended VOC GC analysis at a minimum to C10+ and H2S analysis for gas and liquids for the following shall be performed and used for emission compliance demonstrations:(A) Separator at the inlet; (B) Dehydration Unit prior to dehydrator; (C) Amine Unit prior to sweetening unit; (D) Tanks for liquids and vapors; and (E) Produced Water or Brine/Salt Water at the inlet prior to storage.
Combustion Devices	Initial Sampling of (i)Any engine greater than 500 horsepower; (ii) Any boiler, heater, or other combustion facility with greater than 40 MMBtu/hr heat input; or (iii) Any turbine	Perform stack sampling and other testing as required to establish the actual quantities of air contaminants being emitted into the atmosphere (including but not limited to NOx, CO, VOC, and O2. Engines greater than 500 hp shall also sample for formaldehyde. Each combustion facility shall be tested at a minimum of 50% of the design maximum firing rate of the facility. Each tested firing rate shall be identified in the sampling report. Sampling shall occur within 180 days after initial start-up of each unit. Additional sampling shall occur as requested by the TCEQ Regional Director.
Engines	Periodic Evaluation	(A) Conduct evaluations of each engine performance every calendar quarter after initial compliance testing by measuring the NO_x, CO, and O_2 content of the exhaust. Test shall occur more than 30 days apart. Individual engines shall be subject to quarterly performance evaluation if they were in operation for 500 hours or more during the three-month (quarterly) period. The performance of each engine shall be evaluated at a minimum once per year regardless of hours of operation. (B) The use of portable analyzers specifically designed for measuring the concentration of each contaminant in parts per million by volume is acceptable for these evaluations. The portable analyzer shall be operated in accordance with the EPA's, Office of Air Quality Planning and Standards, Emission Measurement Center Conditional Test Method - Determination of O_2, CO, and NO_x from Stationary Sources for Periodic Monitoring (Portable Electrochemical Analyzer Procedure) [CTM-034] (September 8, 1999). The NO_x and CO emissions then shall be converted into units of grams per horsepower-hour and pounds per hour. (C) Emissions shall be measured and recorded in the as-found operating condition, except no compliance determination shall be established during start-up, shutdown, or under breakdown conditions. After each occurrence of engine maintenance such as major component replacement, overhaul, oxygen sensor replacement, or catalyst replacement, an evaluation of engine performance as described above shall be performed within two weeks. (D) In lieu of the above mentioned periodic monitoring for engines and biennial testing, the holder of this permit may install, calibrate, maintain, and operate a continuous emission monitoring system (CEMS) to measure and record the concentrations of NO_x and CO from any engine, turbine, or other external combustion facility. Diluents to be measured include O_2 or CO_2. Except for system breakdowns, repairs, calibration checks, zero and span adjustments, and other quality assurance tests, the CEMS shall be in continuous operation and shall record a minimum of four, and normally 60, approximately equally spaced data points for each full hour. The NO_x and diluents CEMS shall be operated according to the methods and procedures as set out in 40 CFR Part 60, Appendix B, Performance Specifications 2 and 3. The CO CEMS shall be operated according to the methods and procedures as set out in 40 CFR Part 60, Appendix B, Performance Specifications 4, 4A, or 4B. CEMS shall follow the quality assurance requirements of Appendix F except that Cylinder Gas Audits may be conducted in all four calendar quarters in lieu of the annual Relative Accuracy Test Audit. A CEMS with downtime due to breakdown or repair of more than 10% of the facility operating time for any calendar shall be considered as a defective CEMS and the CEMS shall be replaced within 2 weeks.

Combustion Devices	Biennial Testing Any engine greater than 500 horsepower or any turbine	Every two year period starting from the first Initial Compliance Testing, the following facilities shall be retested according to the procedures of the Initial Compliance Retesting shall occur within 90 days of the two year anniversary date of the Initial Compliance Testing. If a facility has been operated for less than 2000 hours during the two year period, it may skip the retesting requirement for that period. After biennial testing, any engine retested under the above requirements shall resume periodic evaluations within the next two calendar quarters.
Thermal Oxidizer	Initial Sampling and Monitoring for performance for VOC, Benzene, and H2S	Stack testing is required for VOC and benzene and, at Region's discretion, H2S and must be coordinated and approved. The TO must have proper monitoring and sampling ports installed in the vent stream and the exit to the combustion chamber, to monitor and test the unit simultaneously. The temperature and oxygen measurement devices shall reduce the temperature and oxygen concentration readings to an averaging period of 6 minutes or less and record it at that frequency. The temperature measurement device shall be installed, calibrated, and maintained according to accepted practice and the manufacturer's specifications. The device shall have an accuracy of the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5°C. The oxygen analyzer shall be zeroed and spanned daily and corrective action taken when the 24-hour span drift exceeds two times the amounts specified Performance Specification No. 3, 40 CFR Part 60, Appendix B. Zero and span is not required on weekends and plant holidays if instrument technicians are not normally scheduled on those days. The oxygen analyzer shall be quality-assured at least semiannually using cylinder gas audits (CGAs) in accordance with 40 CFR Part 60, Appendix F, Procedure 1, § 5.1.2, with the following exception: a relative accuracy test audit is not required once every four quarters (i.e., two successive semiannual CGAs may be conducted). An equivalent quality-assurance method approved by the TCEQ may also be used. Successive semiannual audits shall occur no closer than four months. Necessary corrective action shall be taken for all CGA exceedances of ±15 percent accuracy and any continuous emissions monitoring system downtime in excess of 5 percent of the incinerator operating time. These occurrences and corrective actions shall be reported to the appropriate TCEQ Regional Director on a quarterly basis. Supplemental stack concentration measurements may be required at the discretion of the appropriate TCEQ Regional Director. Quality assured or valid data of oxygen analyzer must be generated when the TO is operating except during the performance of a daily zero and span check. Loss of valid data due to periods of monitor break down, inaccurate data, repair, maintenance, or calibration may be exempted provided it does not exceed 5 percent of the time (in minutes) that the oxidizer operated over the previous rolling 12 month period. The measurements missed shall be estimated using engineering judgment and the methods used recorded.
Condensers	Initial Sampling	Effectiveness may require sampling or monitoring upon request by the TCEQ or local programs and is required in all cases where greater than 80% is claimed. Proper monitoring and sampling ports must be installed in the vent stream before and after the condenser. Stack testing shall occur during the worst-case period as specified by the Regional office, including consideration for high ambient temperature and humidity. Stack testing must be coordinated and approved with the Field Operations Division.

Table 6 Monitoring and Records Demonstrations

Category	Description	Record Information
Site Production or Collection	natural gas, oil, condensate, and water	Site inlet gas volume and sulfur concentration, daily gas/liquid production and load-out from tanks
Equipment and facility summary	Current process description	As-built plot plan with property line, off-site receptors, and all equipment on-site
Equipment specifications	Process units, tanks & equipment, vapor recovery units; flares; thermal oxidizers; and reboiler control devices (glycol, amine unit)	Volumes and pressures, material and compositions of process vessels to be depressured, purged or degassed and emptied for MSS, demonstrations that the control equipment is properly sized to handle the volumes, pressures, flows and/or emissions processed or controlled, and the manufacturer's or design engineers estimate of appropriate compliant ranges for parameters that need to be monitored.
Standardized Methods or Recommendations	Manufacturer or Company Practices	Operational specifications, recommended maintenance schedules, Best Management Practices (BMP), and any leak detection and repair (LDAR) program
Site LDAR Program	Details of fugitive component monitoring plan, and LDAR results, including QA, QC	(A) A monitoring program plan must be maintained that contains, at a minimum, the following information: (i) an accounting of all the fugitive components by type and service at the site with the total uncontrolled fugitive potential to emit estimate; (ii) identification of the components at the site that are required to be monitored with an instrument or are exempt with the justification, note the following can be used for this purpose: (a) piping and instrumentation diagram (PID); or (b) a written or electronic database.; (iii) the monitoring schedule for each component at the site with difficult-to-monitor and unsafe-to-monitor valves, as defined by Title 30 Texas Administrative Code Chapter 115 (30 TAC Chapter 115), identified and justified, note if an unsafe-to-monitor component is not considered safe to monitor within a calendar year, then it shall be monitored as soon as possible during safe-to-monitor times and a record of the plan to monitor shall be maintained; and (iv) the monitoring method that will be used (audio, visual, or olfactory means; Method 21; the Alternative Work Practice in 40 CFR §60.18(g) - (i)); (v) for components where instrument monitoring is used, information clarifying the adequacy of the instrument response; (vi) the plan for hydraulic or pressure testing or instrument monitoring new and reworked components. (B) Records must be maintained of all monitoring instrument calibrations. (C) Records must be maintained for all monitoring and inspection data collected for each component required to be monitored with a Method 21 portable analyzer. (D) Leaking components must be tagged and a leaking-components monitoring log must be maintained for all leaks greater than the applicable leak definition (i.e.10,000 ppmv, 2000 ppmv, or 500 ppmv) of VOC detected using Method 21, all leaks detected by AVO inspection, and all leaks found using Alternative Work Practice specified in 40 CFR §60.18(g)-(i). The log must contain, at a minimum, the following: (i) the method used to monitor the leaking component (audio, visual, or olfactory inspection; Method 21; or the Alternative Work Practice in 40 CFR §60.18(g) - (i)); (ii) the name of the process unit or other appropriate identifier where the component is located; (iii) the type (e.g., valve or seal) and tag identification of component; (iv) the results of the monitoring (in ppmv if a Method 21 portable analyzer was used); (v) the date the leaking component was discovered;(vi) the date that a first attempt at repair was made to a leaking component; (vii) the date that a leaking component is repaired; (viii) the date and instrument reading of the recheck procedure after a leaking component is repaired; and (ix) the leaks that cannot be repaired until turnaround and the date that the leaking component is placed on the shutdown list. (E) If the owner or operator is using the Alternative Work Practice specified in 40 CFR §60.18(g) - (i), the records required by 40 CFR §60.18(i)(4). (F) Any open-ended line or valve which is a repair or replacement not completed within 72 hours shall be monitored on a weekly basis except that a leak is defined as any VOC reading greater than background. The results of this weekly check and any corrective actions taken shall be recorded. (G) Audio, visual and olfactory inspections shall occur quarterly for BMP and at least weekly in concert with required instrument monitoring programs by operating personnel walk-through and be recorded. (H) A check of the reading for any pressure-sensing device to verify rupture disc integrity shall be performed weekly.
Minor Piping Changes	Addition or replacement of components	Records showing all replacements and additions, including summary of emission type and quantity and whether less than 0.01 tpy VOC.
Equipment Replacement	Like-Kind replacement	Records on equipment specifications and operations, including summary of emissions type and quantity.

Material Characteristics	natural gas, oil, condensate, and water	Any change in material composition or adjustment of parameters to any units which could result in an increase or change in character of emissions
Process Units	Glycol Dehydration Units	Records of Operational Monitoring and Testing Records
	Process Separators	Records of Operational Monitoring and Testing Records
	Oil/Water Separators	Records of Operational Monitoring and Testing Records
	Amine Units	Records of Operational Monitoring and Testing Records
Boilers, Reboilers, Heater-Treaters, and and Process Heaters	Combustion	Records of Operational Monitoring and Testing Records Records of the hours of operation of every combustion device and engines of any size by the use of a process monitor such as a run time meter. The owner or operator may choose to undergo testing and retesting at the most frequent intervals identified in Table 5 in lieu of installing a meter and recording the hours of operation
Internal Combustion Engines	Combustion	Records of Appropriate Operational Monitoring and Testing Records Records of the hours of operation of every combustion device and engines of any size by the use of a process monitor such as a run time meter. The owner or operator may choose to undergo testing and retesting at the most frequent intervals identified in Table 5 in lieu of installing a meter and recording the hours of operation See fuel records below
Gas Fired Turbines	Combustion	Records of Appropriate Operational Monitoring and Testing Records Records of the hours of operation of every combustion device and engines of any size by the use of a process monitor such as a run time meter. The owner or operator may choose to undergo testing and retesting at the most frequent intervals identified in Table 5 in lieu of installing a meter and recording the hours of operation
Fuel Records	VOC and Sulfur Content	For each separate fuel gas use at the site, the fuel usage and VOC content if the VOC content was used in emission estimation. If field gas contains more than 1.5 grains (24 ppmv) of H_2S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions do not exceed limitations
Tanks/Vessels	Color/Exterior	Records demonstrating inspection and maintenance of paint color and vessel integrity. Tank ID number stenciled on the outside of the tank or vessel
Storage Tanks		
Loading	Each Loading Spot	Either: (A) an annual record of reevaluation of material loaded and a daily record of actual loading rates and amounts loaded to show the characteristics of the material loaded and the rate and amounts are below the amounts and levels represented in the registration; or (B) Maintain and update monthly an emissions record which includes calculated emissions of VOC from all loading operations over the previous rolling 12 month period. The record shall include the loading spot, control method used, quantity loaded in gallons, name of the liquid loaded, vapor molecular weight, liquid temperature in degrees Fahrenheit, liquid vapor pressure at the liquid temperature in psia, liquid throughput for the previous month and rolling 12 months to date. Records of VOC temperature are not required to be kept for liquids loaded from unheated tanks which receive liquids that are at or below ambient temperatures. Emissions shall be calculated using the TCEQ publication titled "Technical Guidance Package for Chemical Sources - Loading Operations." Note this would also apply to routine pump truck loading for regular material transport.
	Tank Trucks	Records of tank truck certifications and testing.
Truck Loading	All Types	(A) Prior to each liquid transfer, documentation indicating the identity of the liquid in the truck, the identity of the liquid being transferred, the liquid level, and type of transfer (submerged fill or vacuum truck). (B) At the end of each liquid transfer, a record of the liquid level
Cooling Tower and Heat Exchange Systems	Maintenance Repair	Records must be maintained of all monitoring data and equipment repairs Water must be monitored monthly for VOC emissions using TCEQ Sampling Procedures Manual, Appendix P dated January 2003 or a later edition.
Alternate Operations	Planned MSS or other operational variations including control downtime	Records of redirection of vent streams during primary operational unit or control downtime, including associated alternate controls, releases and compliance with emission limitations.
Regular Blowdown and Planned MSS	Process Vessels and Equipment, directly and indirectly related to the production of natural gas and natural gas liquids	Records of the source and control where applicable of blowdowns or depressurization. Documentation shall be maintained of the locations and/or identifiers where the purge gas or steam enters the process equipment or storage vessel and the exit points for the purge gases. If the process equipment is purged with a gas, two system volumes of purge gas must have passed through the control device or controlled recovery system before the vent stream may be sampled to verify acceptable VOC concentration prior to uncontrolled venting. In addition to meeting all the requirements in Table 5, (A) Type of activity;

		(B) Time and duration of activity; (C) Reason and root cause for activity; (D) Control of activity; (E) Composition of emissions released; (F) Estimated emissions released; and (G) Records of monitored concentrations and QA/QC to allow equipment opening at 10,000ppmv or 10% of the LEL per the methods in Table 6; (H) Plant processes and procedures to prepare and execute planned and unplanned MSS.
Control Devices	Flare Monitoring	(A) The flare and pilot flame shall be continuously monitored by a thermocouple or an infrared monitor. The time, date, and duration of any loss of flare or pilot flame shall be recorded. Each monitoring device shall be accurate to, and shall be calibrated at a frequency in accordance with, the manufacturer's specifications. (B) If field gas contains more than 1.5 grains (24 ppmv) of H_2S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed emission limitations. (C) If equipped with monitors: (i) readings shall be taken at least once every 15 minutes and the average hourly values of the flow and composition shall be recorded each hour. The monitors shall be calibrated on an annual basis to meet the following accuracy specifications: the flow monitor shall be ±5.0%, temperature monitor shall be ±2.0% at absolute temperature, and pressure monitor shall be ±5.0 mm Hg; (D) If the stream composition is monitored: (i) calibration of the analyzer shall follow the procedures and requirements of Section 10.0 of 40 CFR Part 60, Appendix B, Performance Specification 9, as amended through October 17, 2000 (65 FR 61744), except that the multi-point calibration procedure in Section 10.1 of Performance Specification 9 shall be performed at least once every calendar quarter instead of once every month, and the mid-level calibration check procedure in Section 10.2 of Performance Specification 9 shall be performed at least once every calendar week instead of once every 24 hours. The calibration gases used for calibration procedures shall be in accordance with Section 7.1 of Performance Specification 9. Net heating value of the gas combusted in the flare shall be calculated according to the equation given in 40 CFR §60.18(f)(3) as amended through October 17, 2000 (65 FR 61744). (ii) If a calorimeter is used, the calorimeter shall be calibrated, installed, operated, and maintained, in accordance with manufacturer recommendations, to continuously measure and record the net heating value of the gas sent to the flare, in British thermal units/standard cubic foot of the gas. (iii) The monitors and analyzers shall operate at least 95% of the time when the flare is operational, averaged over a rolling 12 month period. Flared gas net heating value and actual exit velocity determined in accordance with 40 CFR §60.18(f)(4) shall be recorded at least once every 15 minutes as appropriate. Hourly mass emission rates shall be determined and recorded using the above readings and used to demonstrate compliance with emission limitations.
Control Devices	Performance Monitoring	The flare pilot flame shall be continuously monitored by a thermocouple or an infrared monitor. The time, date, and duration of any loss of pilot flame shall be recorded. Each monitoring device shall be accurate to, and shall be calibrated at a frequency in accordance with, the manufacturer's specifications. VCUs shall be monitored with the same parameters and requirements noted for flares or they may be monitored for temperature past the combustion zone as specified for thermal oxidizers.
Control Devices	Thermal Oxidizers Performance Monitoring	Records of the stack testing and appropriate temperature and flow conditions. The TO exhaust temperature and oxygen concentration shall be continuously monitored and recorded when waste gas is directed to the oxidizer. See fuel records above.
Control Devices	Condensers	Records of the stack testing and appropriate temperature and flow conditions. Continuously monitor and record temperature of exhaust.

Table 7 Best Available Control Technology and Control Device Requirements

Source or Facility	Air Contaminant	Minimum Acceptable Design, Control or Technique, Control Efficiencies, and Other Details during Production Operations
Fugitive Components	VOC as Crude Oil, Natural Gas or Condensate Benzene H_2S	*See attached table:* FUGITIVE COMPONENT LEAK DETECTION AND REPAIR (LDAR) BEST AVAILABLE CONTROL TECHNOLOGY REQUIREMENTS TABLE 10. This applies to all components at the site.
Glycol Dehydration Unit	VOC < 10 tpy as Natural Gas Benzene H_2S	Process vessels shall be sealed units kept in good repair without leaks or cracks. Flash drum and condenser vent are not required to be controlled. Glycol dehydrators shall have one or more of the following: flash tank, still vent, and condenser. All emissions shall be routed to a vapor recovery unit (VRU), reboiler, or other thermal destruction device in order to maximize control efficiency. Note: all the VOCs including BTEX must be accounted for assuming no controls.
	VOC ≥ 10 tpy and < 50 tpy as Natural Gas Benzene H_2S	Minimum of 80% control efficiency for the condenser and 70% for the reboiler and requirements for the control devices selected below. Compliance with applicable MACT conditions will satisfy these requirements.
	VOC ≥ 50 tpy as Natural Gas Benzene H_2S	Minimum of 98% control efficiency and requirements for the control devices selected below. Compliance with applicable MACT conditions will satisfy these requirements.
Molecular Sieve	VOC	Treatment process vessels shall be sealed units kept in good repair without leaks or cracks. Emissions during regeneration shall be recycled or controlled with a minimum 98% control efficiency directed to units and equipment controlled as required by this table.
Methanol Injection	Methanol	*See Tanks for storage of treatment chemicals and Fugitive Components for handling.* Treatment process vessels shall be sealed units kept in good repair without leaks or cracks (100% capture)
Process Separators with a gas stream.	VOC Benzene H_2S	*See Fugitive Components for handling,* Sealed units kept in good repair without leaks or cracks. Vents must be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table. If separator is pressurized, streams must be enclosed and the receiving unit or equipment must meet BACT as directed to units and equipment controlled as required by this table.
Oil/Water separators	VOC with partial pressure < 0.5 psia at maximum liquid temperature or 95 F which ever is greater. Benzene H_2S	Sealed units kept in good repair without leaks or cracks. May vent to atmosphere through vent no larger than 3 inch diameter. If H_2S can exceed 24 ppmv in the vapor space the separator vent shall be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table.
	VOC with partial pressure ≥ 0.5 psia at maximum liquid surface temperature or 95 F which ever is greater, Benzene, H_2S	Sealed units kept in good repair without leaks or cracks. The oil layer must have a floating cover over the entire liquid surface with a conservation vent to atmosphere or the vents must be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table. If H_2S can exceed 24 ppmv in the vapor space the separator vent shall be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table. If the separator operates with more than 25,000 gallons (595 barrels) of liquid contained or is use as an oil storage tank, it shall be treated as a storage tank and meet those requirements.
	VOC where the material entering contains entrained or dissolved gas, benzene, H_2S	These separators must be treated as process separators with a gas stream and follow those requirements.
Amine Unit	VOC H_2S CO	All vents on process vessels and equipment must be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table.
SulfaTreat and Iron Sponge	H_2S	*See Tanks for storage of treatment chemicals and Fugitive Components for handling.* Treatment process vessels shall be sealed units kept in good repair without leaks or cracks (100% capture)

Cryogenic Liquid Separation Units	VOC H_2S	*See Combustion Units for POC, See Fugitive Components for handling.* Process vessels shall be sealed units kept in good repair without leaks or cracks (100% capture). All vents on process vessels and equipment must be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table.
Refrigeration Separation Units	VOC H_2S	*See Combustion Units for POC, See Fugitive Components for handling.* Process vessels shall be sealed units kept in good repair without leaks or cracks (100% capture). All vents on process vessels and equipment must be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table.
Boilers, Reboilers, Heater-Treaters, and Process Heaters	NOx, CO, $PM_{10/2.5}$ VOC formaldehyde SO_2,	If unit has a designed maximum firing rate of < 40 MMBTU/hr, it must be designed and operated for good combustion and meet 0.036 lb/MMBtu (or 30 ppmvd @ 3% O_2) for NO_X and 100 ppmvd @ 3% O_2 for CO. Fuel for all combustion units shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf).
		If unit has a designed maximum firing rate of ≥ 40 MMBTU/hr, it must be designed and operated for good combustion of CO, low- NO_X burners and meet 0.01 lb/MMBtu for NO_X and 50 ppmvd @ 3% O_2 for CO.
Internal Combustion Engines (ICE)	NOx CO $PM_{10/2.5}$ VOC formaldehyde SO_2	Low NO_X Lean burn engines or rich burn engines equipped with catalytic converters. Design and operations shall meet 0.5 g NO_x /hp-hr for engines greater than or equal to 500 hp or 9 ppmvd at 3% O2, and 1.0 g NO_x/hp-hr for engines less than 500 hp. All engines shall meet 3 g CO /hp-hr, and 1 g VOC /hp-hr. Fuel for all ICE shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf), or field gas. If field gas contains more than 1.5 grains (24 ppmv) of H_2S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed the limitations listed in the SP registration.
Gas Fired Turbines	NOx, CO, $PM_{10/2.5}$ VOC,SO_2, formaldehyde	Units shall be designed and operate with low NOx combustors and meet 25 ppmvd @ 15% O_2 for NO_X and 50 ppmvd @ 15% O_2 for CO. Fuel for all turbines shall be sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf), or field gas. If field gas contains more than 1.5 grains (24 ppmv) of H_2S or 30 grains total sulfur compounds per 100 dscf, the operator shall maintain records, including at least quarterly measurements of fuel H_2S and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed the limitations listed in the SP registration.

Storage Tanks	Crude oil, Condensate, Treatment chemicals, Produced water, Fuel, Slop/Sump Oil and any other storage tanks that contain a VOC or a film of VOC on the surface of water.	VOC with partial pressure < 0.5 psia at maximum liquid surface temperature or 95 F which ever is greater, Benzene H_2S	All tanks with a storage capacity greater than 500 gallons must be submerged fill. Un-insulated tank exterior surfaces exposed to the sun shall be white or aluminum except where a dark color is necessary to assist the tank in absorbing or retaining heat for the purpose of maintaining material in a liquid state or other local ordinance requirements. Paint and insulation must be maintained in good condition. Tank hatches shall remain closed except for sampling or maintenance.
		VOC with partial pressure ≥ 0.5 psia at maximum liquid surface temperature or 95 F which ever is greater. Benzene H_2S	All tanks with a storage capacity greater than 500 gallons must be submerged fill. Un-insulated tank exterior surfaces exposed to the sun shall be white or aluminum except where necessary to meet a local ordinance requirement. Paint and insulation must be maintained in good condition. Tank hatches shall remain closed except for sampling or maintenance.
Brine, Saltwater and Wastewater Tanks with no VOC on the water surface.		H_2S	If H_2S can exceed 24 ppmv in the vapor space the tank shall be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table.

Pressurized Tanks for natural gas or LPG	VOC	Process vessels shall be sealed units kept in good repair without leaks or cracks (100% capture). Any periodic venting of inert gasesinerts shall be directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table.
PRESSURIZED TRUCK LOADING OPERATIONS – CRUDEOIL, NGL, AND CONDENSATE	VOC	Each tank truck shall be leak checked and certified annually in accordance with 49 CFR 180.407 Department of Transportation (DOT), for pressure tank trucks rated at 15 psig or greater.
Blowdowns (Compressor and Pipeline)	VOC < 10 tpy H_2S	None
Blowdowns (Compressor and Pipeline)	VOC ≥ 10 tpy H_2S	Minimum of 98% control efficiency by operating a vapor recovery system, or other capture, control, or recovery device.
Cooling Tower Heat Exchange System	VOC Benzene PM	Heat exchange systems must be non-contact design Systems with heat exchangers that cool a fluid with VOC shall meet the following: The cooling water must be at a higher pressure than the process fluid in the heat exchangers or the cooling tower water must be monitored monthly for VOC emissions using TCEQ Sampling Procedures Manual, Appendix P dated January 2003 or a later edition. Equipment shall be maintained so as to minimize VOC emissions into the cooling water. Cooling water VOC concentrations greater than 0.08 ppmw indicate faulty equipment. CT shall be designed with drift eliminators. If the repair of a heat exchanger would require a unit shutdown that would create more emissions than the repair would eliminate, the repair may be delayed until the next planned shutdown or 180 days if no shutdowns are scheduled. The emissions may not exceed the allowable emissions as determined in tables 1-4 based on the cooling water circulation rate and the most recent testing for VOC emissions.
Process Units, Vessels and Equipment not previously listed.	VOC as Crude Oil, Natural Gas or Condensate Benzene H_2S	Process vessels shall be sealed units kept in good repair without leaks or cracks (100% capture). All vents on process vessels and equipment must be captured and directed to a control device listed in this table with a minimum design control efficiency of 98% and must meet all requirements for that device in this table.

Table 8 Control Device BACT Table

Control Devices and Facilities	Air Contaminant of Concern	Minimum Acceptable Design, Control or Technique, Control Efficiencies, and Other Details during Production Operations
Vapor Recovery Systems	VOC H2S	VRUs that are used at oil and gas sites to control emissions must be designed so as to handle twice the amount of emissions they are designed to recover for periods when temperature and pressure may have an affect on the system. All valves must be designed to prevent leaks. All hatches and openings must be properly gasketed and sealed with the unit properly connected for efficient operation. Downtime is limited to an average of 5% or 432 hr/yr
Flares	VOC Benzene NOx CO SO_2 H_2S	Flares used for control of emissions from production, planned MSS or emergency/upset uses are required to meet a 98% VOC and H_2S destruction efficiency of the streams directed to the control. (Note, for the calculation the thermal conversion destruction of H2S and other sulfur compounds is assumed to be 100% to SO_2 plus 2% of the H_2S is assumed to be emitted as H_2S.) To meet the required destruction efficiency flares must be designed and operated in accordance with 40 Code of Federal Regulations (CFR), §60.18, General Control Device Requirements, standard approved by the commission, including specifications of minimum heating values of waste gas, maximum tip velocity, and pilot flame monitoring. If necessary to ensure adequate combustion, sufficient gas shall be added to make the gases combustible. An automatic ignition system may be used in lieu of a continuous pilot when all streams routed to the flare are specifically directed there through control valves by an operator and if no streams are directed to the flare for control through pressure relief valves or automated emergency control valves, unless all the streams directed to the flare are unplanned MSS streams. The flare must be lit at all times that there is an emissions stream being vented to the flare. Fuel for all flare pilots and any assist gas used to insure adequate combustion shall be sweet natural gas, liquid petroleum gas, fuel gas containing no more than ten grains of total sulfur per 100 dry standard cubic feet (dscf), or sweet or sour field gas. The flare shall be operated with no visible emissions except periods not to exceed a total of five minutes during any two consecutive hours. Flares may be designed with steam or air assist to help reduce visible emissions from the flare but must meet the appropriate requirements in 40 CFR 60.18.At no time shall the flare tip velocity exceed the allowable tip velocity in 60.18At no time shall minimum heating values fall below the associated minimum heating value in 60.18
Thermal Oxidizers	VOC Formaldehyde Benzene NOx SO_2 H_2S	Documentation showing as-built condition matches design for a minimum residence time of at least 0.5 seconds.Achieve a VOC destruction efficiency of greater than 99 percent. (Note, for the calculation the thermal conversion destruction of H_2S and other sulfur compounds is assumed to be 100% to SO_2 plus 0.1% of H_2S is assumed emitted as H_2S. Any assist gas used to insure adequate combustion shall be sweet natural gas, liquid petroleum gas, fuel gas containing no more than 10 gr of total sulfur per 100 dry standard cubic feet (dscf), or sweet or sour field gas. The TO firebox exit temperature shall be maintained at not less than 1,400°F at all times and an exhaust oxygen concentration of not less than 3 percent shall be maintained while waste gas is being fed into the oxidizer, the six minute average temperature and six minute average oxygen concentration shall be greater than the respective hourly average maintained during the most recent satisfactory stack testing.
Condensers	VOC H_2S	Condensers shall achieve a minimum of 80% recovery effectiveness for VOCs. Outlet gas temperature must be continuously measured and shall not exceed the temperature determined by the manufacture or design engineer's specification set to assure compliance with the control efficiency below the dew point of the VOCs controlled. Effectiveness may require sampling or monitoring upon request by the TCEQ or local programs and is required in all cases where greater than 80% is claimed.
Cooling Towers and other process cooling water	water cooling towers, water treatment systems, boiler feedwater, stormwater	water handling must be designed and operated to avoid direct contact with gaseous or liquid process streams containing VOC, H2S, halogens or halogen compounds, cyanide compounds, inorganic acids, or acid gases
Electric Generating Facilities	used for supporting OGS operations	Must comply with the technical requirements of the Electric Generating Unit standard permit (not including the EGU registration requirements).

Table 9 Fugitive Component LDAR BACT Table

FUGITIVE COMPONENT LEAK DETECTION AND REPAIR (LDAR) BEST AVAILABLE CONTROL TECHNOLOGY REQUIREMENTS TABLE	
All fugitive components must meet the minimum design, monitoring, control and other emissions techniques listed in this Table unless the component's service meets one of the following exceptions:	
Exceptions	**Additional Details**
Total uncontrolled potential to emit from all components ≤ 10 tpy	See Best Management Practices
Pipeline quality sweet natural gas	Must meet pipeline quality specifications
The operating pressure is at least 5 kilopascals (0.725 psi) below ambient pressure	
Instrument monitoring is not required when the aggregate partial pressure or vapor pressure is less than 0.5 psia at 100 °F or at maximum process operating temperature.	This exception is applicable only when the OGS components have uncontrolled fugitive VOC emissions < 25 tpy
Instrument monitoring is not required when the aggregate partial pressure or vapor pressure is less than 0.044 psia at 68 °F or at maximum process operating temperature.	This applies at all times, unless a control efficiency is being claimed for instrument monitoring, in which case there must be a record supporting that the instrument could detect a leak.
Waste water lines containing less than 1% VOC by weight and operated at ≤ 1 psig	
Cooling water line components if cooling tower inlet water is monitored for VOC at the cooling tower	
CO_2 lines after VOC is removed (referred to as Dry Gas lines in 40 CFR Part 60 Subpart KKK having a VOC weight percentage less than 4 %; the weighted average Effects Screening Level (ESL) of a combined VOC stream is > 3,500 $\mu g/m^3$; and total uncontrolled emissions for all such sources is 1 ton per year at any OGS.	The weighted average ESL_x for process stream, X, with multiple VOC species will be determined by: $ESL_x = fa/ESL_a + f_b/ESL_b + f_c/ESL_c + ... + fn/ESL_n$ Where: n =total number of VOC species in process stream; ESL_n = the effects screening level in $\mu g/m^3$ for the contaminant being evaluated (published in the most recent edition of the TCEQ ESL list); f_n=the weight fraction of the appropriate VOC species in relation to all other VOC in process stream.
Minimum Design, Monitoring, Technique or Control	**Additional Details**
Construction of new and reworked piping, valves, pump systems, and compressor systems shall conform to applicable American National Standards Institute (ANSI), American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), or equivalent codes. Compliance with these requirements does not assure compliance with requirements of NSPS, NESHAPS or MACT, and does not constitute approval of alternate standards for these regulations.	To the extent that good engineering practice will permit, new and reworked valves and piping connections shall be so located to be reasonably accessible for leak-checking during plant operation.
New and reworked underground process pipelines shall contain no buried valves such that fugitive emission monitoring is rendered impractical. New and reworked piping connections shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inch diameter. Gas or hydraulic testing of the new and reworked piping connections at no less than operating pressure shall be performed prior to returning the components to service or they shall be monitored for leaks using an approved gas analyzer within 15 days of the components being returned to service. Adjustments shall be made as necessary to obtain leak-free performance.	
Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve to seal the line so that no leakage occurs. Except during sampling, both valves shall be closed.	Each open-ended valve or line shall be equipped with an appropriately sized cap, blind flange, plug, or a second valve to seal the line. Except during sampling, both valves shall be closed. If the removal of a component for repair or replacement results in an open ended line or valve, it is exempt from the requirement to install a cap, blind flange, plug, or second valve for 72 hours. If the repair or replacement is not completed within 72 hours, the permit holder must complete either of the following actions within that time period: the line or valve must have a cap, blind flange, plug, or second valve installed; or the permit holder shall verify that there is no leakage from the open-ended line or valve. Leaks must be repaired within 24 hours or a cap, blind flange, plug, or second valve must be installed on the line or valve.
Connectors shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.	

Accessible valves shall be monitored by leak-checking for fugitive emissions quarterly using an approved gas analyzer. Sealless/leakless valves (including, but not limited to, welded bonnet bellows and diaphragm valves) and relief valves equipped with a rupture disc upstream or venting to a control device are not required to be monitored. If an unsafe-to-monitor valve is not considered safe to monitor within a calendar year, then it shall be monitored as soon as possible during safe-to-monitor times. A difficult-to-monitor component for which quarterly monitoring is specified may instead be monitored annually.	Sealless/leakless and relief valves equipped exempted from monitoring due to control are not counted in the controlled fugitive emissions estimate. See Table 6 Sampling and Demonstrations of Compliance for Fugitive and LDAR Analyzer requirements. See Table 7, Monitoring and Records Demonstrations to identify Difficult-to-monitor and unsafe-to-monitor valves.
For valves equipped with rupture discs, a pressure-sensing device shall be installed between the relief valve and rupture disc to monitor disc integrity.	All leaking discs shall be replaced at the earliest opportunity but no later than the next process shutdown.
All pump, compressor and agitator seals shall be monitored quarterly with an approved gas analyzer or be equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal. Seal systems designed and operated to prevent emissions or seals equipped with an automatic seal failure detection and alarm system need not be monitored. Seal systems that prevent emissions may include (but are not limited to) dual pump seals with barrier fluid at higher pressure than process pressure or seals degassing to vent control systems kept in good working order. Submerged pumps or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic-driven pumps) may be used to satisfy the requirements of this condition and need not be monitored.	See Table 8 Sampling and Demonstrations of Compliance for Fugitive and LDAR Analyzer requirements.
For a site where the total uncontrolled potential to emit from all components is **< 25 tpy**; Components found to be emitting VOC in excess of 10,000 parts per million by volume (ppmv) using EPA Method 21, found by visual inspection to be leaking (e.g. whistling, dripping or blowing process fluids or emitting hydrocarbon or H_2S odors) or found leaking using the Alternative Work Practice in 40 CFR §60.18(g) - (i) shall be considered to be leaking and shall be repaired, replaced, or tagged as specified.	Components subject to routine instrument monitoring with an approved gas analyzer under this leak definition my claim a 75% emission reduction credit when evaluating controlled fugitive emission estimates. This reduction credit does not apply when evaluating uncontrolled emission or to any component not measured with an instrument quarterly. See Table 6 Sampling and Demonstrations of Compliance for Fugitive and LDAR Analyzer requirements
For a site where the total uncontrolled potential to emit from all components is **≥ 25 tpy**; Valves found to be emitting VOC in excess of 500 ppmv using EPA Method 21, found by audio, visual or olfactory inspection to be leaking (e.g. whistling, dripping or blowing process fluids or emitting hydrocarbon or H_2S odors) or found leaking using the Alternative Work Practice in 40 CFR §60.18(g) - (i) shall be considered to be leaking and shall be repaired, replaced, or tagged as specified and Pump, compressor, and agitator seals found to be emitting VOC in excess of 2,000 ppmv using EPA Method 21, found by audio, visual or olfactory inspection to be leaking (e.g. whistling, dripping or blowing process fluids or emitting hydrocarbon or H_2S odors) or found leaking using the Alternative Work Practice in 40 CFR §60.18(g) - (i) shall be considered to be leaking and shall be repaired, replaced, or tagged as specified.	Components subject to routine instrument monitoring under this leak definition my claim a 97% emission reduction credit when evaluating controlled fugitive emission estimates. This reduction credit does not apply when evaluating uncontrolled emission or to any component not measured with an instrument quarterly. See Table 6 Sampling and Demonstrations of Compliance for Fugitive and LDAR Analyzer requirements.
Components **not** subject to a monitoring program but found to be emitting VOC in excess of 10,000 ppmv using EPA Method 21, found by audio, visual or olfactory inspection to be leaking (e.g. whistling, dripping or blowing process fluids or emitting hydrocarbon or H_2S odors) shall be considered to be leaking and shall be repaired, replaced, or tagged as specified. All components are subject to monitoring when using the Alternative Work Practice in 40 CFR §60.18(g) - (i).	
Any site may reduce the controlled fugitive emission estimates by including components not required to be monitored in the quarterly instrument monitoring program or applying the lower leak definition of the more stringent program as appropriate.	Quarterly monitoring at a leak definition of 10,000 ppmv would equate to a 75% emission reduction credit when evaluating controlled fugitive emission estimates for the component. Quarterly monitoring at a leak definition of 500 ppmv for valves, flanges and connectors and 2000 ppmv for any other component would equate to a 97% emission reduction credit when evaluating controlled fugitive emission estimates for the component. This reduction credit does not apply when evaluating uncontrolled emission or to any component not measured with an instrument quarterly. See Table 6 Sampling and Demonstrations of Compliance for Fugitive and LDAR Analyzer requirements.

After completion of the required quarterly inspections for a period of at least two years, the operator of the OGS facility may change the monitoring schedule as follows: (i)After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service. (ii)After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service. If the owner or operator is using the Alternative Work Practice in 40 CFR §60.18(g) - (i), the alternative frequencies specified in this standard permit are not allowed.	At the discretion of the TCEQ Executive Director or designated representative, early unit shutdown or other appropriate action may be required based on the number and severity of tagged leaks awaiting shutdown.
Shutdown prior to Maintenance of Fugitive Components	**Start-up after Maintenance of components**
All components shall be kept in good repair. During repair or replacement, emission releases from the emptying of associated piping, equipment, and vessels must meet the emission limits and control requirements listed under pipeline or compressor blowdowns.	When returning associated equipment and piping to service after repair or replacement of fugitive components, appropriate leak detection shall occur and correction, maintenance or repair shall be immediately performed if fugitive components are not in good working order.
Maintenance of Fugitive Components	
Use of adhesives, solvents, cleansers, lubricants and other materials containing de minimis amounts of VOC or other compounds which could be released to the atmosphere is authorized. No other emissions are authorized.	

APPENDIX F

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** July 9, 2010

Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Richard A. Hyde P.E., Deputy Director
Office of Permitting and Registration

Docket No.: 2010-0251-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 106, Permits by Rule
Chapter 116, Control of Air Pollution by Permits for New Construction or Modification
Oil and Gas Production Sites
Rule Project No. 2010-018-106-PR

Background and reason(s) for the rulemaking:
The executive director is evaluating all permits by rule (PBR) and standardized authorizations through a multiple-phased process known as the PBR Study. Through this study, the executive director has determined a need to significantly revise the PBR and standard permit for oil and gas facilities or groups of facilities at a site (OGS) and that updated regulatory oversight would be beneficial to ensure protectiveness for air contaminants such as benzene, hydrogen sulfide, and other air contaminants associated with oil and gas production sites. These updates are particularly critical for OGS in urban locations or in close proximity to the public. Overall, this rulemaking is necessary to ensure that authorizations for OGS are improved for enforceability, updated based on current scientific information, and to properly regulate all operations.

Scope of the proposed rulemaking:

A) Summary of what the rulemaking will do:
The executive director recommends the repeal of the existing §106.352, Oil and Gas Production Facilities, and the proposal of a new PBR that would provide an updated, comprehensive, and protective authorization for many common oil and gas sites in Texas. In a concurrent action, the executive director recommends the repeal of §116.620, Installation and/or Modification of Oil and Gas Facilities, and the proposal of a new non-rule standard permit for oil and gas production facilities.

The proposed new PBR and standard permit will include operating specifications and emissions limitations for typical equipment (facilities) during normal operation, which includes production and planned maintenance, start-up and shutdown (MSS). The proposed PBR and standard permit both include a list of best management practices (BMP). The proposed PBR and standard permit will specifically address the appropriateness of multiple authorizations at one contiguous property and would reference the many new federal standards which have been promulgated by the United States Environmental Protection Agency (EPA), as well as include revised criteria for registration and changes at existing, authorized sites. Specific requirements also include flexibility in meeting emission standards based on stack height and distance to receptors. The proposed standard permit also includes best available control technology (BACT) requirements, but encourages recovery over destruction control of streams.

Existing sites must notify the executive director with site identification and which historical authorization is claimed (PBR or standard permit) by 2013. This notification can occur through the E-permit system. Existing sites must also meet planned MSS requirements by January 5, 2012. Any change at an existing site

which increases actual emissions or requires new construction will trigger application of all new proposed requirements for oil and gas sites.

B) Scope required by federal regulations or state statutes:
The executive director recommends these actions to ensure that facilities authorized by PBRs remain an insignificant source of air contaminants as required under Texas Health and Safety Code (THSC), §382.05196, Permits by Rule, and to ensure enforceability and use of best available control technology as required under THSC, §382.05195, Standard Permits.

C) Additional staff recommendations that are not required by federal rule or state statute: None

Statutory authority:
The new section will be proposed under THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.023, Orders, which authorizes the commission to issue orders necessary to carry out the policy and purposes of the Texas Clean Air Act (TCAA), THSC §382.051, Permitting Authority of Commission; Rules, which authorizes the commission to issue permits, including THSC, §382.057 permits by rule for insignificant facilities; and THSC §382.0513, Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Subchapter C of the TCAA; THSC, §382.05196, which authorizes the commission to adopt permits by rule for types of facilities that make an insignificant contribution of air contaminants to the atmosphere; and THSC, §382.05195, which authorizes the commission to issue a standard permit for new or existing similar facilities.

Effect on the:
A) Regulated community:
Oil and gas facilities currently authorized under a PBR and that remain unmodified are not affected by this proposal except for indentifying notification and planned MSS. Unmodified facilities authorized under a standard permit would be required to comply with the new standard permit at the next renewal cycle as of January 1, 2016. With either authorization, modification or addition of new facilities would require reauthorization under the appropriate new PBR or standard permit.

The executive director has determined that there could be significant costs for facilities required to use the new authorizations. Sampling of emission streams can range from $800 to $5,000. Installation of emission controls can range for $10,000 to $100,000 based on the specific facilities located at a site and control options selected by the site owner or operator for the PBR or as required BACT for the standard permit. Painting of tanks as required for larger potential emitting tanks under standard permit can cost from $6,000 to $20,000.

The authorization of MSS, the use of BMP, and the flexibility in meeting emissions standard are all new features of the PBR and standard permit and will require adjustments by oil and gas owners or operators.

B) Public:
The public will benefit from updated regulations that allow the executive director to more effectively monitor compliance, develop a more accurate inventory of oil and gas sites, and ensure that sites are operating under regulations that are protective of human health.

C) Agency programs:
The executive director has structured the rule proposal so that the resources of the Air Permits Division will be adequate to handle any increases in workload.

Stakeholder meetings:
A stakeholder meeting was held in Austin on April 8, 2010 with simultaneous video-teleconferences with meetings at the Dallas/Ft.Worth and Tyler regional offices. Stakeholder areas of concern include:
- Linking of sites under a single authorization based on one-quarter mile separation.
- Use of other PBRs
- Painting of tanks versus lease contractual requirements
- Expense of controls
- Complex restrictions, requirements, and records

Potential controversial concerns and legislative interest:
Legislative interest is high and some legislators have been briefed on the proposal. Topics of potential controversy include:
- Use of a single site authorization and the linking of sites
- Painting of tanks
- Control requirements on existing sites
- Attention of environmental groups, particularly in the Barnet Shale Region, desiring updated regulations
- Possible delays to economic growth

Will this rulemaking affect any current policies or require development of new policies?
Guidance for the new PBR and standard permit will be developed, but adoption of these proposals will not significantly affect internal policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
The current PBR and standard permit could remain in place. However, these regulations have not been updated to reflect current science and monitoring of oil and gas emissions and their protectiveness is in question.

Key dates in the proposed rulemaking schedule:

Anticipated proposal date: July 28, 2010
Anticipated *Texas Register* publication date: August 13, 2010
Public hearing date (if any): September 14, 2010
Public comment period: August 13 – September 17, 2010
Anticipated adoption date: January 12, 2011 (Projected)
Effective date: February 3, 2011 (Projected)

Agency contacts:
Anne Inman, Technical Lead, 239- 1276, Air Permits Division
Beecher Cameron, Rule Project Manager, 239-1495, Air Permits Division
Benjamin Rhem, Staff Attorney, 239-6501
Michael Parrish, Texas Register Coordinator, 239-2548

Re: Docket No. 2010-0251-RUL

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Kevin Patteson
Curtis Seaton
Daniel Womack
Office of General Counsel
Anne Inman
Beecher Cameron
Michael Parrish