

Texas Commission on Environmental Quality

Chapter 116 - Control of Air Pollution by Permits for New Construction or Modification

SUBCHAPTER H : PERMITS FOR GRANDFATHERED FACILITIES

DIVISION 2 : SMALL BUSINESS STATIONARY SOURCE PERMITS, PIPELINE FACILITIES PERMITS, AND EXISTING FACILITY PERMITS

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**DIVISION 2: SMALL BUSINESS STATIONARY SOURCE PERMITS,
PIPELINE FACILITIES PERMITS, AND EXISTING FACILITY PERMITS**
§§116.774 - 116.781, 116.783, 116.785 - 116.788, 116.790
Effective February 19, 2004

§116.774. Eligibility for Small Business Stationary Source Permits.

(a) The owner or operator of a grandfathered facility located at a small business stationary source, as defined in TCAA, §382.0365(h), and which is not required to report to the commission under TCAA, §382.014 may apply for a small business stationary source permit before September 1, 2004.

(b) The deadlines contained in §116.770 of this title (relating to Requirement to Apply) and §116.771 of this title (relating to Implementation Schedule for Additional Controls) do not apply to facilities eligible to apply for a small business stationary source permit. Any grandfathered facility, including any facility for which the owner or operator has submitted a notice of shutdown under §116.772 of this title (relating to Notice of Shutdown), located at a small business stationary source may not emit air contaminants on or after March 1, 2008, unless the facility is permitted, or has a permit application pending under this chapter, or has a registration or pending registration for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

(c) Applications for a small business stationary source permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(d) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the small business stationary permit and for complying with this subchapter.

Adopted May 22, 2002

Effective June 12, 2002

§116.775. Eligibility for Pipeline Facilities Permits.

(a) The owner or operator of a grandfathered reciprocating internal combustion engine or group of engines that is a part of processing, treating, compression, or pumping facilities connected to or part of a gathering or transmission pipeline may apply for a pipeline facilities permit.

(b) Applications for a pipeline facilities permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).

(c) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the pipeline facilities permit and for complying with this subchapter.

(d) The owner or operator of more than one grandfathered reciprocating internal combustion engine may apply for a pipeline facilities permit for a single grandfathered reciprocating internal combustion engine or a group of the grandfathered reciprocating internal combustion engines connected to or part of a gathering or transmission pipeline.

Adopted May 22, 2002

Effective June 12, 2002

~~§116.776. Emissions Reductions Incentives for Control of Emissions from Grandfathered Reciprocating Internal Combustion Engines Located in the East Texas Region.~~

~~(a) Emissions reductions incentives will be made available to eligible facilities through a grant program administered under this section and Chapter 14 of this title (relating to Grants).~~

~~(b) Eligible facilities. Owners or operators of grandfathered reciprocating internal combustion engines are eligible for reimbursement of a portion of the cost of controls from the emissions reductions incentive account based on the following eligibility criteria and grant program requirements.~~

~~(1) The owner or operator of grandfathered reciprocating internal combustion engine or engines associated with pipelines must reduce the hourly emissions rate of nitrogen oxides (NO_x), expressed in terms of grams per brake horsepower hour, by at least 50%.~~

~~(2) The grandfathered reciprocating internal combustion engine or engines must be located in the East Texas region as defined in §101.330 of this title (relating to Definitions).~~

~~(3) The owner or operator must apply for and receive a pipeline facilities permit or replace the grandfathered reciprocating internal combustion engine with an engine with a NO_x emission rate which is at least 50% lower than the emission rate of the grandfathered engine or an electric engine.~~

~~(4) The project to control emissions must be initiated on or before September 1, 2006.~~

~~(5) The project to control emissions must be completed before March 1, 2007.~~

~~(6) The owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the emissions reductions incentives account is sought, must enter a contract with the commission in accordance with a request for proposals (grant applications) under Chapter 14 of this title.~~

~~(7) The owner or operator of the grandfathered reciprocating internal combustion engine for which a distribution from the emissions reductions incentives account is sought, must identify, at the time the permit application is filed, the facilities for which reimbursement is requested.~~

~~(8) The owner or operator who elects to replace a grandfathered reciprocating internal combustion engine with an electric engine must submit a Registration of Replacement of a Grandfathered Reciprocating Internal Combustion Engine with an Electric Engine. The owner or operator who elects to achieve the 50% reduction in NO_x emissions rate by replacing a grandfathered engine or engines with new combustion engines must obtain authorization for the new engines under this chapter or Chapter 106 of this title (relating to Permits by Rule).~~

~~(9) The emissions controls identified in the permit must be operating before the executive director can authorize payment from the emissions reductions incentives account.~~

~~(10) For grandfathered reciprocating internal combustion engines replaced by electric engines or engines with a NO_x emission rate which is at least 50% lower than the emission rate of the grandfathered engine, the replacement engine must be installed and operating and the grandfathered reciprocating internal combustion engine must be permanently shut down before the executive director can authorize payment from the emissions reductions incentives account.~~

~~(11) Facilities required by any other state or federal law to make reductions in emissions of NO_x are not eligible for reimbursement.~~

~~(12) A person or an affiliate of a person who pays or contributes money to the emissions reductions incentives account is ineligible to receive money from the account.~~

~~(c) Limitations on reimbursement. The commission may reimburse the owner or operator of a grandfathered reciprocating internal combustion engine or engines for no more than the cost associated with achieving emissions reductions between 30% and 50% of the engine's hourly emissions rate of NO_x before the addition of controls. The commission may distribute less than the amount calculated in this manner based on the amount of money contributed to the fund and the incentive criteria for distribution outlined in subsection (d) of this section.~~

~~(d) Incentive criteria. The commission will distribute any money in the fund based on the following incentive criteria:~~

~~(1) when the reductions are actually achieved; and~~

~~(2) if the executive director determines that a cap is appropriate in order to maximize equitable distribution of the fund, a cap on the amount to be reimbursed for each engine.~~

~~(e) Verification of emissions reductions. Prior to reimbursement from the emissions reductions incentives account, the owner or operator of each grandfathered reciprocating internal combustion engine must provide documentation verifying the amount of actual emission reductions achieved.~~

~~Adopted January 28, 2004~~

~~Effective February 19, 2004~~

§116.777. Eligibility for Existing Facility Permits.

- (a) The owner or operator of a grandfathered facility may apply for an existing facility permit.
- (b) Applications for an existing facility permit shall be submitted under the seal of a Texas licensed professional engineer, if required by §116.110(e) of this title (relating to Applicability).
- (c) The owner or operator of the grandfathered facility, group of facilities, or account is responsible for applying for the existing facility permit and for complying with this subchapter.

Adopted May 22, 2002

Effective June 12, 2002

§116.778. Additional Requirements for Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.

In addition to complying with all applicable requirements of this subchapter, any application for a small business stationary source permit, a pipeline facilities permit, or an existing facility permit must include emissions from the facility resulting from any associated dockside vessel operations. These emissions must comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public and minimization of emissions to the extent possible, consistent with good air pollution control practices.

Adopted August 21, 2002

Effective September 12, 2002

§116.779. Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits.

- (a) Any application for a small business stationary source permit, a pipeline facilities permit, or an existing facility permit must include a completed Form PI-1G, Grandfathered Facility Permit Application. The Form PI-1G must be signed by an authorized representative of the applicant. The Form PI-1G specifies additional support information which must be provided before the application is deemed complete. In order to be granted a permit, the owner or operator of the grandfathered facility shall submit information to the commission which demonstrates that all of the following are met.

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

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

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

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

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

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

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

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

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

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

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

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

(b) In addition to the requirements of subsection (a) of this section, an application for a pipeline facilities permit shall propose a control method and identify the date by which the control method will be implemented. The proposed control method shall demonstrate compliance with the following requirements.

(1) Facilities located in the East Texas region as defined in §101.330 of this title (relating to Definitions), shall demonstrate that each grandfathered reciprocating internal combustion engine will achieve at least a 50% reduction of the hourly emissions rate of nitrogen oxides (NO_x), expressed in terms of grams per brake horsepower-hour (g/bhp-hr). The commission may also require a 50% reduction of the hourly emissions rate of volatile organic compounds (VOC), expressed in terms of g/bhp-hr for each engine located in the East Texas region as defined in §101.330 of this title.

(2) The commission shall require up to a 20% reduction of the hourly emissions rate of NO_x and may also require up to a 20% reduction of the hourly emissions rate of VOC, both expressed in terms of g/bhp-hr, from grandfathered reciprocating internal combustion engines located in the West Texas region as defined in §101.330 of this title or El Paso County.

(3) Notwithstanding the requirements of paragraphs (1) and (2) of this subsection, the owner or operator of more than one grandfathered reciprocating internal combustion engine may average the reductions achieved among more than one reciprocating internal combustion engine connected to or part of a gathering or transmission pipeline in order to demonstrate the reductions required in paragraphs (1) and (2) of this subsection. If the owner or operator chooses to average among engines located in both the East and West Texas regions as defined in §101.330 of this title it must be demonstrated that the sum of the reductions achieved from all of the engines located in the

East Texas region as defined in §101.330 of this title will achieve the reductions required in paragraph (1) of this subsection. For purposes of this paragraph, El Paso County is included in the West Texas region as defined in §101.330 of this title.

(4) If the emissions reductions required by paragraphs (1) and (2) of this subsection will be achieved by averaging reductions as allowed by paragraph (3) of this subsection, the average may not include emission reductions achieved in order to comply with any other state or federal law. If the emission reductions required by paragraphs (1) and (2) of this subsection will be achieved at one account, the reduction may include emission reductions achieved since January 1, 2001 in order to comply with another state or federal law.

(c) In addition to the requirements of subsection (a) of this section, an application for an existing facility permit shall propose an air pollution control method that is at least as beneficial as the best available control technology (BACT) that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the submittal of the existing facility permit application, considering the age and remaining useful life of the facility. The application shall identify the date by which the control method will be implemented.

Adopted May 22, 2002

Effective June 12, 2002

§116.780. Public Participation for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits.

(a) An applicant for a pipeline facilities permit or an existing facility permit shall publish a notice of intent to obtain the permit in accordance with Chapter 39, Subchapters H and K of this title (relating to Applicability and General Provisions; and Public Notice of Air Quality Applications).

(b) Any person who may be affected by emissions from a grandfathered facility may request the commission to hold a notice and comment hearing on the pipeline facilities permit application or the existing facility permit application. The public comment period shall end 30 days after the publication of Notice of Receipt of Application and Intent to Obtain Permit in accordance with §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Any request for a notice and comment hearing must be made in writing during the 30-day public comment period.

(c) Any notice and comment hearing regarding initial issuance of a pipeline facilities permit or an existing facility permit shall be conducted in accordance with the procedures in §116.781 of this title (relating to Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits) and not under the APA.

(d) The commission's response to public comments and the notice of its decision on whether to issue or deny a pipeline facilities permit or an existing facility permit will be conducted in accordance

with the procedures in §116.783 of this title (relating to Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications).

(e) A person affected by a decision to issue or deny a pipeline facilities permit or an existing facility permit may seek review, as appropriate, under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

Adopted May 22, 2002

Effective June 12, 2002

§116.781. Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits.

(a) The notice and comment hearing requirements apply only to the initial issuance of a pipeline facilities permit or an existing facility permit.

(b) The commission shall decide whether to hold a hearing. The commission is not required to hold a hearing if it determines that the basis of the request by a person who may be affected by emissions from a grandfathered facility is unreasonable. If a hearing is requested by a person who may be affected by emissions from a grandfathered facility, and that request is reasonable, the commission will hold a hearing.

(c) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the grandfathered facility is located, or in the municipality nearest to the location of the facility. The notice must be published at least 30 days before the date set for the hearing. The notice must include the following:

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

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

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

(d) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) The commission may set reasonable time limits for oral statements, and may require the submission of statements in writing.

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

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

(e) The commission will make an audio recording or written transcript of the hearing available to the public.

(f) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all issues and submit all arguments supporting that position by the end of the public comment period.

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

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

(h) The commission will keep a record of all comments received and issues raised in the hearing. This record will be available to the public.

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

(j) The commission will respond to comments consistent with §116.783 of this title (relating to Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications).

Adopted May 22, 2002

Effective June 12, 2002

§116.783. Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications.

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

(b) The notice must include the following:

- (1) the response to any comments submitted during the public comment period;
- (2) identification of any change in the conditions of the draft permit and the reasons for the change; and
- (3) a statement that any person affected by the decision of the executive director may file a motion to overturn under the appropriate procedure in Chapter 50 of this title (relating to Action on Applications and Other Authorizations) and may seek judicial review under TCAA, §382.032, relating to Appeal of Commission Action.

Adopted May 22, 2002

Effective June 12, 2002

§116.785. Permit Fee.

(a) Fees required. Any person who applies for a permit under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits must remit a fee of \$450 at the time of application for such permit. If the facility is a small business stationary source facility as defined in TCAA, §382.0365(h), the fee shall be \$100.

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

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

Adopted May 22, 2002

Effective June 12, 2002

§116.786. General and Special Conditions.

(a) Permits issued under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits may contain general and special conditions. The holders of a permit under this division shall comply with any and all such conditions.

(b) General conditions. Holders of permits issued under this division shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Sampling requirements.

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

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

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

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

(3) Recordkeeping. The permit holder shall:

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

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

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

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

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

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

(5) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order

and operating properly during normal facility operations. The permit holder shall provide notification for upset and maintenance in accordance with §101.6 and §101.7 of this title (relating to Upset Reporting and Recordkeeping Requirements; and Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements).

(6) Compliance with rules.

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

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

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

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

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

(2) Special conditions for written approval.

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

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

(ii) a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule).

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

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

(ii) cause the facility to become subject to review in accordance with:

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

(II) the provisions in §116.150 and §116.151 of this title (relating to Nonattainment Review), and §§116.160 - 116.163 of this title (relating to Prevention of Significant Deterioration Review).

Adopted May 22, 2002

Effective June 12, 2002

§116.787. Amendments and Alterations of Permits Issued Under this Division.

The owner or operator planning the modification of a facility permitted under this division relating to small business stationary source permits, pipeline facilities permits, and existing facility permits must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for permits issued under this division are subject to the requirements of Subchapter B of this chapter.

Adopted May 22, 2002

Effective June 12, 2002

§116.788. Renewal of Permits Issued Under this Division.

Permits issued under this division (relating to Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits) shall be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

Adopted May 22, 2002

Effective June 12, 2002

§116.790. Delegation.

The commission delegates to the executive director the authority to take any action on a permit issued under this division relating to small business stationary source permits, pipeline facility permits, and existing facility permits.

Adopted May 22, 2002

Effective June 12, 2002