



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

NOV 16 2007

Mr. Richard Hyde
Director
Air Permits Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, TX 78711-3087

RE: Comments on Proposed Amendments to Chapter 106, 116 for Maintenance, Startup and Shutdown (MSS) Chapter 106, Subchapter K

Dear Mr. Hyde:

The U.S. Environmental Protection Agency (EPA), Region 6 appreciates the opportunity to comment on the above proposed amendments to Chapter 106 and Chapter 116 to accommodate a Permit by Rule and Standard Permit for MSS Emissions as part of the New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permitting program in Texas. It is EPA's policy that all potential to emit (PTE) emissions, including quantifiable MSS, be included in both NSR and PSD applicability determinations and air quality permits. We are aware that Texas Commission of Environmental Quality (TCEQ) has a plan to permit all MSS emissions for major sources in Texas. We understand that the inclusion of MSS in the air permitting program will not only give TCEQ a better accounting basis for the emissions inventory, but will also demand accountability from its permitted facilities, especially those in the non-attainment areas.

EPA policy and guidance allows Permit by Rule (PBR) and Standard Permits (SP) as exemptions from applicable permitting requirements for minor sources or insignificant emission increases. The EPA recognizes that TCEQ has several PBR and SP for minor new source review (NSR) permits. The EPA recognizes that permitting authorities may develop a PBR or standard NSR permit for a category of emissions units or stationary sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting, and recordkeeping. "Similar in nature" may refer to size, processes, and operating conditions. However, the PBR and SP for MSS can be used by any source for any activity by meeting the specific criteria and limits in the permit. Our comments below are specific to the PBR and SP for MSS.

1. Since the PBR and SP can be used by any source for any activity, for the record please explain how this is consistent with 40 Code of Federal Regulations Subpart G that the State must provide a demonstration of the relationship between the production and emission related limits chosen for the rule and the air quality modeling showing that the rule is protective of the National Ambient Air Quality Standards. Region 6 is concerned about cumulative impacts from numerous PBRs and SPs at major sources. Please provide locations and estimates of numbers of sources that will be subject to PBRs, SP and individual authorizations necessary for EPA to determine whether the State Implementation Plan (SIP) revisions are consistent with § 110(l) of the Act.
2. The EPA recognizes that the conditions in the PBR and SP are restrictive based on pollutant concentration determinations. The EPA is requesting that TCEQ provides examples where major sources may use the PBR and SP for predictable, planned MSS activities and a technical analyses that it meets the EPA approval of the existing SIP Chapter 106 rules (68 *Federal Register* (FR) 64543). Section 106.1 provides that only certain types of facilities or changes within facilities which do not make significant contribution of air contaminants to the atmosphere are eligible for a PBR. This satisfies the requirements of 40 CFR 51.160(a) which provides that the SIP must include procedures that enable the permitting authority to determine whether the construction or modification will result in a violation of applicable portions of the control strategy or interfere with attainment or maintenance of an NAAQS.
3. 40 CFR 51.166 (a)(3) and (4) requires that the permitting agency must ensure that increments are not exceeded even for the minor NSR program. For the record, TCEQ should indicate the number of sources or potential emissions expected from such sources for the PBR and SP.
4. The PBR does not require notification to the agency prior to coverage or even after they used. The rule only requires sources to roll in these authorizations at permit renewals or after a two year period. The PBR therefore does not have practical enforceability for emission limits or for the number of events that a PBR was utilized.
5. The PBR and SP should have sufficient monitoring and recordkeeping to meet the limits in 106.4(a) 1¹. The rule should be clarified such that the cumulative

¹ “Total actual emissions authorized under permit by rule from the facility shall not exceed 250 tpy NOx or CO, 25 tpy VOCs, SO2, PM or [combined HAPs].”

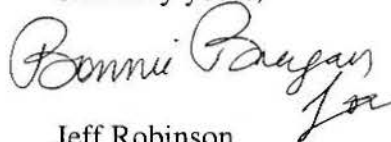
emissions of the PBR and SP not exceed the major and significant emission levels. The PBR and SP should have provisions for notification to the Agency whenever the conditions contained in the rule have been exceeded or otherwise violated.

7. The PBR and SP allow facilities to preconstruct (temporary facilities) prior to the agency's review. The rule should provide TCEQ the opportunity to evaluate the MSS PBR and SP for major sources or for sources that already have MSS in the permit to determine activities that should have been appropriately aggregated so as not to circumvent the PSD/Nonattainment New Source Review (NNSR) regulations.
8. The rule should require some type of affirmative action by the State on notification by the permittee - at a minimum, a written record of acknowledgment of receipt of the notification and date coverage began and the rule must allow the State to deny coverage at any time for cause. The EPA's final rulemaking (71 FR 14439, March 22, 2006) conditionally approving Missouri PBR provisions stated that the rule did not clearly authorize Missouri to prevent construction or modification where necessary. Please clarify how TCEQ will be able to track sources operating under this PBR.
9. The EPA has historically approved "prohibitory" or "exclusionary" rules such as PBR or general permitting rules (SP) where the primary purpose is to provide practically enforceable PTE limits to avoid Federal requirements applicable to major sources and/or to streamline permitting processes for "numerous similar sources" where the quantity of emissions is insignificant. The MSS SP requires the facilities in the application to indicate specific emission limits similar to a site-specific permit, in addition to having site specific MSS emissions in a PSD/NNSR permit. It is not clear that these emissions meet the "exemptions" of the Texas Clean Air Act 382.057.
10. 106 (4)(a) 2 refers to netting by major sources. Please clarify if major sources are allowed to use netting to qualify for a PBR and/or SP and how the netting decreases are made practically enforceable.
11. Section 116.10(11)E also refers to net emission increases. Please indicate how this meets current PSD requirements. The EPA has provided comments regarding this concern in a letter dated September 15, 2006, from David Neleigh to Steve Hagle.
12. 106.268(c) refers to "production emissions". Please identify where this term has been defined in Chapter 106.

13. We request further clarification of TCEQ's authority to deny or revoke a registration for a PBR or SP for cause.
14. We encourage that TCEQ evaluate all previous comments from EPA and the public regarding the PBR and SP for MSS submitted in early 2006.²

Once again, EPA Region 6 commends TCEQ on taking the initiative for permitting of all MSS emissions, which provides mechanisms to monitor air quality that will safeguard the health and the environment for all Texans. If you have any questions regarding the above comments, please contact Bonnie Braganza at (214) 665-7340.

Sincerely yours,



Jeff Robinson
Chief
Air Permits Section

cc via email: Mr. Steve Hagle
Texas Commission on
Environmental Quality
Mr. Blake Stewart
Texas Commission on
Environmental Quality

² EPA's letter dated February 3, 2006, to Ms Lola Brown regarding comments on Proposed Rule Revisions to 30 Texas Administrative Code Chapter 106 and to the SIP – Rule Project Number 2005-016-106-PR and EPA's supplemental comments to Mr. Steve Hagle from David Neleigh dated March 30, 2006.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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1445 ROSS AVENUE, SUITE 1200
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FEB - 3 2006

Ms. Lola Brown
MC 205
Texas Register Team
Office of Legal Services
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RE: Comments on Proposed Rule Revisions to 30 Texas Administrative Code Chapter 106 and 116 and to the State Implementation Plan – Rule Project Number 2005-016-106-PR; Comments on Proposed Standard Permit for Maintenance, Startup, and Shutdown Emission Releases

Dear Ms. Brown:

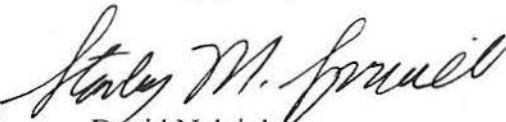
The Environmental Protection Agency (EPA), Region 6 appreciates the opportunity to comment on the above proposed rule and the above standard permit concerning the inclusion of Maintenance, Startup and Shutdown (MSS) Emissions as part of the nonattainment new source review and prevention of significant deterioration (PSD) and minor new source review (NSR) permitting program in Texas. The EPA supports Texas' initiative to authorize appropriate permit allowable limits for startup, shutdown, and maintenance emissions through permitting rules in Chapters 106 and 116, rather than Chapter 101 general rules. We also acknowledge the State's recent State Implementation Plan (SIP) submittal which revises Chapter 101 to remove the affirmative defense for planned maintenance, startup, or shutdown activities on the schedule in Section 101.222(h).

The EPA's long-standing policy is that all potential to emit emissions, including quantifiable MSS emissions, be included in both NSR and PSD applicability determinations and air quality permits. The EPA recognizes that these emissions are part of normal operations which should be accounted for in planning, design, and implementation of operating procedures for process and control equipment. We commend the Texas Commission on Environmental Quality for proposing the revisions to review these emissions during the permitting process. However, we have concerns regarding appropriate technology review, air quality

impacts, public participation, applicability of Federal requirements, permitting quantifiable, anticipated emissions, and issues related to permits by rule and standard permits in the rules as they are currently proposed. Our comments are enclosed.

We believe that these changes are an important improvement to your SIP air permitting programs which have potential to improve air quality in Texas. We will work with you to identify ways to implement the changes necessary to authorize appropriate permit limitation allowables for MSS emissions. Please contact me at (214) 665-7250 or Bonnie Braganza of my staff at (214) 665-7340 if you have further questions.

Sincerely yours,

for 
David Neleigh
Chief
Air Permits Section

Enclosure

cc: Mr. Steve Hagle
Special Assistant
Air Permits Director
Texas Commission on Environmental Quality
Mr. Blake Stewart
Texas Commission on Environmental Quality

Comments on Proposed Rule Revisions to 30 TAC Chapter 106 and 116 and to the State Implementation Plan Rule Project No. 2005-016-106-PR

Comments on the Draft Standard Permit for Maintenance, Startup, and Shutdown Emission Releases

TCEQ is proposing to make fundamental changes to its air permitting program which will more closely track federal requirements for inclusion of MSS emissions in air quality permits. We generally support the proposed changes and make recommendations which will help to ensure SIP-approval of the final rules. These changes recommend that authorization of MSS require best efforts to minimize MSS emissions, provide adequate public participation and safeguards to minimize MSS below existing levels.

1. Applicability of Federal Requirements

The Environmental Protection Agency's (EPA's) long-standing policy is that all potential to emit (PTE) emissions, including quantifiable emissions associated with startup and shutdown must be included in both new source review (NSR) and prevention of significant deterioration (PSD) applicability determinations and air quality permit reviews. EPA defines "potential to emit" as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Please confirm that, under the proposed rules, the Texas Commission on Environmental Quality (TCEQ) includes maintenance, startup and shutdown (MSS) emissions in calculating PTE to determine applicability of federal standards such as Title V, NSR, new source performance standards (NSPS), national emission standards for hazardous air pollutants (NESHAP), and maximum achievable control technology (MACT) for all stationary sources. Please explain how TCEQ will ensure that emissions from all MSS activities are included in federal applicability determinations.

We understand that TCEQ proposes to authorize existing MSS emissions under Chapter 116 without retroactive PSD or nonattainment new source review (NNSR) review if the emissions were previously submitted as a part of the emissions inventory accepted by the Executive Director. However, certain MSS authorizations will require additional permit amendment. For example, if a permitted entity did not include MSS emissions in determining PTE in its existing permit and now will be a major source by inclusion of the MSS either by permit by rule (PBR) or standard permit (SP), EPA believes that, at a minimum, this source must amend its existing permit to document the new major source status. EPA recommends revisions to the notification requirements for PBRs and SPs to identify such sources, as described in more detail below.

2. Technology Review and Impacts Analysis

Please explain how TCEQ will ensure that authorization of MSS emissions in PBRs, SPs and individual permits will provide technology review and impacts analysis similar to those requirements which would have been imposed if the emissions had been reviewed in the original construction or modification permitting action. We understand that TCEQ intends to authorize existing MSS emissions under Chapter 116 without retroactive PSD or nonattainment new source review (NNSR) review if the emissions were previously submitted as a part of the emissions inventory accepted by the Executive Director. Texas has stated that permit amendments to authorize MSS emissions will be subject to best available control technology (BACT) and impacts analysis. Please explain the regulatory requirement that triggers these requirements for a permit amendment to allow for an increase in emissions. Also, please explain how TCEQ will ensure that authorized MSS emissions will not exceed the emissions inventory MSS levels. EPA recommends that notification or certification requirements for the PBR and SP be revised to include the facilities' emission inventory emission rates.

EPA is concerned that the MSS permitting rules may provide a blanket authorization for emissions which should be defined as emissions events (or upsets). Only emissions that are predictable, quantifiable, tied to a specific narrow event of limited duration, and are part of normal operation of a source should be considered in the permit review. MSS emissions from normal operation must be accounted for in the design, planning, and operating procedures for the facility. Without clear definitions and permitting requirements, the source could effectively shield excess emissions arising from poor operation, maintenance or design. See January 28, 1993 Memo from John B. Rasnic, Automatic or Blanket Exemptions for Excess Emissions during Startup and Shutdowns under PSD:

Startup and shutdown as part of the normal operation of a source and should be accounted for in the planning, design and implementation of operating procedures for the process and control equipment. Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate violations of emission limitations during this time. As the 1982 memoranda states, without clear definition and limitations, these automatic exemptions or even secondary limits could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment.

SIP emission limitations, such as PSD and NNSR permit allowables, are ambient-based standards designed to protect the NAAQS and the increments. EPA views all excess emissions above those applicable emission limitation as violations which may aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards. Compliance with BACT and lowest achievable emission rate (LAER) emission limits includes periods of startup and shutdown¹. In other words, BACT and LAER limits apply at all times.

¹ See Memorandum from Steven A. Herman and Robert Perciasepe to Regional Administrators, September 1999, State Implementation Plans (SIPS): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, Memorandum from John B. Rasnic to

However, EPA has recognized that, for some source categories, the best available emissions control systems might not be consistently effective during startup and shutdown periods, despite best efforts regarding planning, design, and operating procedures. States have always had authority to exercise enforcement discretion for these events. In 1999, EPA developed guidance to allow sources to assert an affirmative defense for startup and shutdown (but not maintenance) periods or for the State to develop technological limitations in the underlying standards².

EPA guidance further indicates that if emission limits specified for normal operation are not feasible under startup or shutdown, permits may specify startup and shutdown emission limits that are protective of the national ambient air quality standards (NAAQS). For PSD and NNSR permits, the permitting authority must make an on-the-record determination as to whether compliance with existing permit limitations is infeasible, despite best efforts, during startup and/or shutdown, and if so, what design, control, methodological or other changes are appropriate for inclusion in the permit to minimize the excess emissions during those periods. The permitting authority must also determine that those changes are in compliance with applicable requirements, including NAAQS and increment provisions. The permitting authority's determination of the startup and/or shutdown terms and conditions must also be subject to public notice and comment consistent with the requirements of 40 CFR 51.161. A secondary limit, such as TCEQ is proposing, may be considered provided it is made part of the PSD or NNSR permit and justified as BACT or LAER³

Please explain how TCEQ will ensure the following determinations have been made prior to authorization of MSS emissions above existing SIP emission limitations.

- A. Are actual emissions from the source below existing emission limitations as evidenced by emissions inventory, compliance reporting, emissions event reporting data?
- B. Is compliance with existing permit emission limitations infeasible?
- C. Are the MSS emissions part of normal operations and not emissions events? Are the MSS emissions predictable, quantifiable, tied to a specific narrow event of

Linda M. Murphy, January 28, 1993, Automatic or Blanket Exemptions for Excess Emissions During Startup and Shutdowns Under PSD, Memorandum from Kathleen M. Bennett to Regional Administrators, February 15, 1983, Memorandum from Kathleen M. Bennet to Regional Administrators, September 28, 1982, Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions.

² See September 20, 1999 Memorandum from Steven A. Herman, State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown

³ See *In re: Tallmadge Generating Station*, PSD Appeal No. 02-12, (EAB, May 22, 2003), *In re: Rockgen Energy Center*, PSD Appeal No. 99-1, (EAB August 25, 1999).

limited duration?

- D. Can MSS emissions above existing permit emission limitations be eliminated or reduced through planning, design and implementation of operating procedures for the process and control equipment, including BACT or LAER?
- E. Are the changes in compliance with applicable requirements, including NAAQS and PSD increment provisions?
- F. For sources subject to PSD and NNSR emission limitations, has the State made an on-the-record determination which is subject to public participation in accordance with 40 CFR 51.161.
- G. For major sources, determine whether a site specific amendment is required instead of a PBR or SP.

EPA recommends that TCEQ revise the SPs and the PBRs to require a notification of actual MSS emissions submitted in an emission inventory, over a specified time period, a determination that compliance with existing emission limitations is infeasible and a requirement to minimize MSS emissions prior to authorizing MSS emissions by a PBR or SP, and to make the same determinations in individual permit reviews. EPA also recommends that sources certify to an emission limitation equivalent to actual existing MSS emissions be required. Also, please confirm that sources with permits authorizing MSS emissions cannot qualify for the PBR or SP. EPA recommends that a provision prohibiting sources that currently have MSS authorized in the permits be added to the SP and PBR section 106.4 (f). These changes are necessary to ensure PBR and SP's authorizations are protective of the NAAQS and increments.

EPA recommends that amendments to incorporate MSS emissions follow these guidelines.

SIP emission limitations (such as BACT) must apply at all times, including periods of startup, shutdown, malfunction and scheduled maintenance. Exceptions may be established for necessary and justified startup and/or shutdown events, but may not be appropriate for scheduled maintenance. It should be possible to schedule maintenance of control equipment to occur during unit outage, or else plan for control equipment redundancy, spare parts, etc, therefore establishment of an exception to a SIP limitation should rarely be necessary.

Authorization of MSS emissions must follow the same step-by-step technology review process in determine the SIP limit. The duration of MSS emissions must be justified and documented in the permit. The technology review should include consideration of any specific operating practices and available control technologies to minimize emissions during startup and shutdown.

The permit should include an enforceable permit condition that requires the owner/operator will minimize the frequency and duration of operation in startup or shutdown mode, including careful and prudent planning, operation, and maintenance to avoid unnecessary, preventable, or

unreasonably frequent or lengthy startups and shutdowns. Where a MSS limit is established, the permit should include a limit on the number of hours for which the MSS limit may apply.

EPA will review TCEQ's revisions for consistency with 40 CFR part 51 and § 110(l) of the Clean Air Act (CAA). EPA may not approve a state implementation plan (SIP) revision that would interfere with attainment, reasonable progress or any other applicable requirement of the Act. We are requesting further information necessary to determine that the MSS permitting rules will not increase emissions beyond historic levels and that short-term emissions will not aggravate air quality. EPA anticipates that many Texas sources are in compliance with existing permit limits during periods of startup, shutdown and maintenance. TCEQ must ensure that authorizing MSS emissions will not relax existing BACT, LAER and minor NSR permit limitations.

3. Public Participation

Please explain how TCEQ will ensure that authorization of MSS emissions in PBRs, SPs and individual permits will provide public participation similar to those requirements which would have been imposed if the emissions had been reviewed in the original construction or modification permitting action. We understand that TCEQ proposes to authorize existing MSS emissions under Chapter 116 without retroactive PSD or nonattainment new source review (NNSR) review if the emissions were previously submitted as a part of the emissions inventory accepted by the Executive Director. MSS emissions related to existing the PSD and NNSR permits which authorized the construction or modification would have been subject to public participation requirements consistent with Texas' approved SIP, which requires a 30-day public comment period, availability of the State's air quality analysis, preliminary decision to approve or disapprove the permit and the draft permit, and the opportunity for a public hearing. We believe permit amendments to authorize MSS emissions in PSD or NNSR permits must receive the same public participation. Please clarify whether the proposed rules will provide opportunity for public participation on the draft permit and the State's preliminary analysis to authorize MSS emissions in PSD or NNSR permits.

Proposed changes to §116.116 (d)(2)(A)(iii) and §116.116(d)(3)(A)(iii) require a PBR or SP for new facilities that result in increases in production, changes to method of control changes to method of operation or that change the type or increase the quantity of emissions to be rolled into a permit at amendment. The rule also requires BACT and impact analysis at the time of the amendment. However, the rule does not require public participation for these changes. EPA believes that the public should have an opportunity to comment on the changes. Although notice requirements were met when the source acquired the SP or PBR or the new facility, the requirements from the PBR or SP will be revised during the amendment process. EPA believes the site-specific determinations during this reauthorization process should be subject to public participation requirements

4. Quantifiable, Anticipated (QUAN) PBR

Our review of §106.269 - Quantifiable, Anticipated (QUAN) Emission Releases raises a number of concerns. The category of emissions is not defined in §116.10, - General Definitions. It is described in the rule only by very general terms. The category of emissions is not clearly distinguished from emission events. It also appears that these are the types of events anticipated by EPA's affirmative defense policy and the State's SIP-approved affirmative defense for emissions events. As previously stated, exceptions from compliance with BACT, LAER or minor NSR emission limits must be specific, well-defined and tied to a specific narrow event of limited duration. We are concerned that the rule could be open to a number of interpretations. We find the rule, as currently written, to be vague and potentially unenforceable. We are also concerned that the rule may provide a relaxation of existing BACT, LAER or minor NSR emission limitations. Also, it is unclear how TCEQ will quantify emissions authorized under this rule for SIP planning purposes. For these reasons, we recommend that TCEQ withdraw this PBR.

We understand that review of these types of events presents an administrative burden for TCEQ which rarely results in an enforcement action or the opportunity to reduce these types of emissions. We recommend that TCEQ review this category of emissions on a case-by-case basis rather than adopt a general rule. We also recommend that TCEQ consider revised reporting rules which would clearly identify these excess emission reports to minimize the administrative burden for your staff.

5. Revisions to Chapter 106 General Rules

EPA supports revisions to §106.4 (a)(1) - Requirements for Permitting by Rule- that reduce the total actual emissions that may be authorized under a single PBR claim.

- A. Netting The TCEQ proposes to amend §106.4(a)(1) to provide that a facility qualifies for a PBR if the total net emissions increases authorized under the PBR do not exceed specified thresholds for particular air pollutants. §106.4(a)(2) further provides that the net emissions increases authorized under PBR are either: (A) the difference between the projected new emission rate and the previous allowable emission rate for changes at a qualified facility or (B) the difference between the projected new emission rate and the previous actual emission rate for increases at other than qualified facilities.⁴ Furthermore, §106.4(a)(2)(C) provides that decreases in emissions relied upon for the project must be actual, practical, and federally enforceable. The TCEQ needs to address the following items of concern:

⁴ EPA has not yet approved Texas provisions for qualified facilities that TCEQ authorizes under §116.116(e). Any action by EPA to approved any provisions that reference the provisions for qualified facilities cannot be approved pending EPA's final decisions whether to approve the provisions for qualified facilities.

- i. TCEQ needs to specify the time period over which the increases and decreases will occur in order to be creditable.
- ii. TCEQ needs to identify the criteria used to determine which increases and decreases are used in the netting calculation and the basis for each criterion.
- iii. TCEQ needs to specify how the decreases used in the netting will be made practical and federally enforceable.
- iv. TCEQ needs to explain how site-specific netting in a general permit such as a PBR can meet the public participation requirements of 40 CFR 51.161.

Generally, EPA does not believe a general permit, such as a PBR or SP, can provide for site-specific determinations such as netting.

Changes to § 106.4(a)(2)(A) require emission increases at qualified facilities to be determined as the difference between the projected new emission rate and the previous allowable emission rate of each air contaminant at each facility. For major sources, this definition is inconsistent with federal NSR requirements that emission increases be determined on the basis of actual emissions. Parts C and D of title I (major NSR program) of the Act refer to the definition of “modification” in §111(a)(4) of the Act. The D.C. Circuit Court of Appeals in *State of New York, et al., v U.S. EPA*, June 24, 2005, ruled that applicability of major NSR to modifications must be based on actual emissions. EPA recommends revisions to provide an alternative calculation method for major qualified facilities based upon actual emissions.

B. References to Changes at a Facility, Group of Related Facilities, and Related Increases.

Several sections in this proposed rule refer to “changes at a facility, group of related facilities, and related increases.”⁵ We do not see a definition of the terms “group or related facilities” and “related increases.” The TCEQ needs to define these terms in order to ensure with certainty the criteria that are used to determine how facilities or increases are related and how such facilities or increases are to be grouped.

C. Standard Permit for Maintenance, Startup, and Shutdown Emission Releases

Paragraph (b)(4) refers to any air contaminant from a facility located in an area designated on the Air Pollutant Watch List as maintained by the TCEQ Toxicology Section, Office of Chief Engineer. Texas needs to discuss the Air Pollutant Watch List and include its purpose, how an area is designated, and how it is implemented and enforced. Texas can address this by referring to a web site or otherwise identify where this information can be obtained.

⁵ The term “changes at a facility, group of related facilities, and related increases” occurs in the following, but not limited to the following sections: §106.4(a)(1), (a)(4) through (7), (e), (f)(1) through (7), and (g); and §116.615(a) and (2)(A).

Paragraph (c)(2) of this standard permit provides for protection public health, welfare, and physical property, including the submittal of an air quality modeling analysis that meets the requirements and guidelines of the TCEQ. The TCEQ needs to address that the air quality modeling is based upon applicable models, data bases, and other requirements specified in 40 CFR part 51, appendix W (Guideline on Air Quality Models) as required under 40 CFR 51.160(f)(1). If TCEQ is using models that differ from 40 CFR part 51, appendix W, it must receive written approval from EPA, and must meet the requirements in 40 CFR 51.160(f)(2), including the notice and opportunity for public comment under procedures set forth in 40 CFR 51.102. See 40 CFR 51.160(f)(2). If TCEQ has received written approval from EPA for the models that it uses, please provide the date when the such written approval was issued by EPA.

6. Changes to Chapter 116

A. Section 116.10(2): - General Definitions

EPA supports TCEQ in identifying each of the noble gases as air contaminants in §116.10(2). EPA recommends TCEQ maintain a similar definition of “air contaminants” as a “regulated air pollutant” in 40 CFR 70.2 and an EPA guidance – (Memorandum on the Definition of Regulated Air Pollutant for Purposes of Title V from Lydia Wegman to the Air Division Directors dated October 16, 1995). EPA further recommends that TCEQ maintain a definition equivalent to the definitions of “regulated NSR pollutant” in 40 CFR 51.165(a)(1)(xxxvii) and 51.166(b)(49). In addition to the criteria pollutants, this definition includes any pollutant for which a national ambient air quality standard has been promulgated, the pollutants that are subject to the NSPS under Section 111 of the Act, pollutants subjected to Section 112 including the pollutants listed in 112(g)(2), (j), and (r) and any of the ozone depleting substances under title VI of the Act. Even though ethane is not specified as a VOC by EPA, this pollutant is regulated under 40 CFR 60 and therefore should be included in the definition of an air contaminant.

B. EPA supports TCEQ in clearly defining startup, shutdown and maintenance emissions and normal operations. A definition for “production operations” and “group of related facilities” is also needed to clarify the rule language.

C. §116.111. Please clarify language in the Background and Summary of the Factual Basis for the Proposed Rule §116.111 (a)(2) that gives an owner or operator the ability to authorize MSS emissions in a permit. The actual rule states that “the owner or operator may obtain authorization.....”

D. §116.111(a)(2)(M). Please clarify if the Emission inventory accepted by the Executive Director has been used in the recent SIP attainment demonstration and how the EI in the attainment areas are being used to determine compliance with NAAQS .

E. Section 116.116 - Changes to Facilities

§116.116(d)(2) of the Texas SIP requires:

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

§116.615(3) of the Texas SIP provides:

All changes authorized by standard permit to a facility previously permitted under §§116.110 of this title (relating to Applicability) shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.

The proposed §116.116(d) limits changes authorized under a PBR or SP that will be incorporated into a permit. TCEQ clarifies that BACT and off-property analysis of the emissions authorized by the PBR or Standard Permit will be reviewed at amendment or renewal.

Under the proposed changes, MSS emissions authorized under §§106.268 and 106.269 will not be incorporated into a permitted facility's permit when the permit is amended or renewed. Therefore no further BACT or off-property review will be conducted beyond the requirements of the PBR and SP rules. The preamble explains any MSS emissions that qualify under those sections will be in small quantities due to the emission limitations in these sections. EPA is concerned that TCEQ will not have authority to evaluate the cumulative impacts of numerous such authorizations that may occur at major sources.

Please provide a rationale for the proposed change and explain how cumulative impacts from numerous PBRs will be evaluated. Please explain how TCEQ can ensure that multiple PBRs will not interfere with attainment, reasonable progress or any other applicable requirement of the Act. EPA recommends that TCEQ review the proposed revisions to the PBR and SP for MSS emissions to include provisions that require a cumulative impacts analysis or continue to incorporate all PBRs and Standard Permits into a permit in accordance with the existing SIP.

7. Emission Trading

EPA supports the change to section 116.116(e) (1) (C) that will prohibit trading between MSS/QUAN emissions and "production" emissions. While the rule language does not explicitly state that reductions in MSS emissions from PBRs or SPs can be used to generate emission reduction credits (ERCs) and/or discrete emission reduction credits (DERCs), EPA concludes it would be inappropriate to allow this to occur. Emission reductions that can be creditable as ERCs or DERCs must be surplus, enforceable, permanent, real, and quantifiable, as outlined in the Division 1 and 4 regulations, EPA's Economic Incentive Program Guidance, 40 CFR 51.165(a)(1)(E), and section 173 of the CAA. It is EPA's opinion, among other reasons, that the MSS emissions are not available for the generation of emission credits since the PBR and SP rule do not require a facility to have enforceable emission limits, the facility is not required to monitor actual emissions by an EPA approved method, and MSS emissions are not part of the facility's original NSR permit.

8. Section 116.710 Applicability

TCEQ proposes to establish an emission cap for MSS activities at sources with a flexible permit. EPA has not approved the underlying flexible permit rules into the SIP. Further review is necessary to determine whether an MSS emission cap is consistent with the Federal PAL rule⁶.

⁶ Federal regulations at 40 CFR 52.21 (1)(aa)Applicability,(iii) state: Except as provided under paragraph (aa)(1)(ii)(c) of this section, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.