Texas Commission on Environmental Quality

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

SUBCHAPTER A : DEFINITIONS

**§116.12. Nonattainment and Prevention of Significant Deterioration Review Definitions.**
As adopted by TCEQ March 26, 2014, effective April 17, 2014 (6-86).
This submittal in Regulations.gov document EPA-R06-OAR-2013-0808-0027 [TX155.27].
Approved by EPA November 10, 2014 (79 FR 66626) effective November 10, 2014 (TXd161).
This Final Rule in Regulations.gov document EPA-R06-OAR-2013-0808-0025 [TX155.25]

Section 116.12 Explanation:

The SIP does NOT include the substantive revisions to the definitions of “major stationary source” at 30 TAC Section 116.12(19) or “major modification” at 30 TAC Section 116.12(20) pertaining to “Step 2” or “non-anyway” GHG sources.

The SIP includes the TCEQ's letter dated 5/3/2012, which explains and clarifies the TCEQ's interpretation of the definition of “plant-wide applicability limit” in 30 TAC Section 116.12(24).

Struck-out text not in SIP.

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*
May 3, 2012

Mr. Carl Edlund, P.E.
Director, Multimedia Planning and Permitting Division
United States Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Dear Mr. Edlund:

As part of U.S. Environmental Protection Agency's (EPA) review of rules submitted by the Texas Commission on Environmental Quality (TCEQ or Commission) to address the 1997 eight-hour ozone National Ambient Air Quality Standard and New Source Review Reform (NSRR) in 2006 and 2011, you requested TCEQ address several issues. The TCEQ responds to your request in two ways. First, on February 22, 2012, the Commission proposed rulemaking to amend five rules to ensure that TCEQ's NSRR rules are approvable as revisions to the Texas State Implementation Plan (SIP). These rules were published in the March 9, 2012 edition of the *Texas Register* and the Commission has received comments on the proposed rules. To expedite federal approval, the TCEQ requests that EPA "parallel process" these revisions to the Texas SIP in accordance with 40 Code of Federal Regulations (CFR) Part 51, Appendix V.

Second, we have prepared responses to the remaining issues for which rulemaking is not required. The TCEQ's responses to these issues are described below.

*Compliance with Federal Clean Air Act (FCAA) § 110(l)*

*Background*

EPA adopted its NSRR rules by publication in the December 31, 2002 issue of the *Federal Register*.[1] Subsequently, the clean unit and pollution control permit portions of the NSRR rules were vacated by the D.C. Circuit Court of Appeals.[2] After TCEQ adopted new and amended rules in January 2006 to implement the three surviving NSRR program components and submitted those as revisions to the Texas SIP, EPA proposed disapproval in 2009,[3] and then took final action to disapprove the rules on September 15, 2010.[4] In August 2010, TCEQ initiated rulemaking to address EPA's proposed disapproval; that rulemaking amended several, but not all, of the rules which were the subject of the 2006 rulemaking. Those changes were adopted in February 2011 and were submitted to EPA for approval as part of the Texas SIP with a request that EPA also consider the rules amended and adopted by the Commission on January 11, 2006, effective on February 1, 2006.

[1] 67 *Fed. Reg.* 80186 (December 31, 2002).
[2] *New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005).
[3] 74 *Fed. Reg.* 48467 (September 23, 2009).
[4] 75 *Fed. Reg.* 56424.

This letter supplements those three rulemakings,[5] and addresses EPA's concerns regarding compliance with FCAA § 110(l) for the three basic program components of NSRR: the revised baseline for determining pre-change emissions, the actual-to-projected actual test for determining post-change increases, and the Plant-wide Applicability Limit (PAL). Although EPA previously determined, as stated in the New Source Review (NSR) Supplemental Analysis dated November 2002, that the implementation of the federal NSRR rules would be environmentally beneficial, EPA requested that TCEQ provide an analysis of how TCEQ's rulemakings that implement these changes meet the FCAA § 110(l).

When EPA adopted its NSRR rules,[6] it expanded its demonstration requirements to include not just different definitions but also different programs in the EPA's revised major NSR regulations. Therefore, to be approved as meeting the 2002 revised major NSR SIP requirements, a State submitting a customized major NSR SIP revision must demonstrate why its program and definitions are at least as stringent as the revised major NSR base program.[7] Moreover, because there is an existing Texas Major NSR SIP, the submitted changes to the major NSR SIP must meet the anti-backsliding provisions of the FCAA in § 193, and meet the requirements in § 110(l) which provides that EPA may not approve a SIP revision if it will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Furthermore, any submitted SIP revision must meet the applicable SIP regulatory requirements and the requirements for SIP elements in Section 110 of the Act, and be consistent with applicable statutory and regulatory requirements. These can include, among other things, enforceability, compliance assurance, replicability of an element in the program, accountability, test methods, and whether the submitted rules are vague. There are four fundamental principles for the relationship between the SIP and any major NSR permits that implement the major NSR program. These four principles as applied to the review of a major or minor NSR SIP revision include: (1) the baseline emissions from a permitted source be quantifiable; (2) the NSR program be enforceable by specifying clear, unambiguous, and measurable requirements, including a legal means for ensuring the sources are in compliance with the NSR program, and providing means to determine compliance; (3) the NSR program's measures be replicable by including sufficiently specific and objective provisions so that two independent entities applying the permit program's procedures would obtain the same result; and (4) the major NSR permit program be accountable, including means to track emissions at sources resulting from the issuance of permits and permit amendments. [8]

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[5] In response, TCEQ provided comments regarding EPA's proposed disapproval in 2009, and subsequently adopted changes to 30 TAC § 116.160(which were submitted to and approved by EPA in 2010). TCEQ also adopted rules to implement the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) in 2005, which EPA included in its 2009 and 2010 disapproval actions. TCEQ responded by amending rules and submitting them to EPA in 2011; EPA approved most of these changes on December 28, 2011 (76 *Fed. Reg.* 81371). Changes to 30 TAC § 116.150 remain for EPA review as part of the NSRR rulemakings.

[6] EPA's NSRR rules were promulgated on December 31, 2002 (67 *Fed. Reg.* 80186) and reconsidered with changes on November 7, 2003 (68 *Fed. Reg.* 63021).

[7] 67 *Fed. Reg.* 80186, at 80241 (December 31, 2002).

[8] *See* EPA's April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 *Fed. Reg.* 13498) (General Preamble).

*TCEQ Rules Comply with the § 110(l) of the FCAA*

The TCEQ's existing NSRR rules meet the applicable SIP regulatory requirements and the requirements for SIP elements in Section 110 of the FCAA, and are consistent with applicable statutory and regulatory[9] requirements; the sections for which rule amendments were proposed on February 22, 2012 also meet these requirements. Therefore, TCEQ has demonstrated in the submitted and proposed rulemakings that TCEQ's major NSR SIP meets all requirements and is approvable as a revision to the SIP.

However, given the changes in the rules, via three rulemakings noted above, TCEQ has not accumulated data for permits issued under the final version of the rules and therefore has no historical data to perform a quantitative analysis of emission reductions to supplement the associated rulemaking. In addition to the SIP submittals provided to EPA in 2006 and 2011, and the 2012 proposed rules and preamble, the following discussion is provided to support the TCEQ's position that its NSRR rules are approvable as revisions to the Texas NSR SIP.

*Change in which years can be used to establish the baseline emissions (also known as "2 in 10")*

EPA's NSRR rules changed the calculation methodology for determining baseline actual emissions for use in major NSR applicability determinations. NSRR allows the use of the highest actual emissions from any consecutive 24-month period within the previous 10 years in place of the actual emissions for the two years prior to start-of-construction when establishing baseline emissions. This change accounts for normal business cycles which produce periods of lower emissions while allowing facilities to pursue operational and physical changes in a timely manner. TCEQ included EPA's baseline determination method in its rules.

The primary benefit of the "2 in 10" rule is allowing applicants who want to use a two-year period that is not the two-years immediately prior to the submittal of the application. An applicant submitting a permit application under the "2 in 10" baseline provisions is required to submit emissions documentation for the 24 month period selected as representative; however, there is no requirement to submit documentation for the average emissions for the two years prior to the start of construction unless those were the representative years selected by the applicant. Therefore, TCEQ has no data currently available which would allow a comparison of the emission increases/decreases under the NSRR rules to what those emission changes would have been in the absence of NSRR. Air Quality Permit Applications (whether only for minor sources, or whether major NSR is also triggered) are reviewed under the rules in effect at the time of application submittal and, for major NSR, at permit issuance. Therefore, TCEQ has not requested the additional information since it was not required at the time of the review.

Adoption and implementation of the "2 in 10" baseline provisions is not expected to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the FCAA. In addition, these rules do not change existing requirements for obtaining offsets for nonattainment permitting and considering all sources for prevention of significant deterioration (PSD) permitting.

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[9] TCEQ excluded malfunction emissions from baseline calculations or projected actual emissions (as those terms are defined in 30 TAC § 116.12(3)(E) and (29)), and in compliance determinations as required by § 116.186(a), both of which are more stringent than EPA's major NSR program.

In addition, the TCEQ processes thousands of air quality authorizations every year. A substantial number of these actions occur at sites that are major sources which used the "2 in 10" baseline provisions to determine major NSR applicability. A significant number of these major sources are located in the Beaumont-Port Arthur and Houston-Galveston-Brazoria areas and are subject to the stringent SIP requirements for control of volatile organic compounds (VOC) and nitrogen oxides ($NO_x$) under Title 30 Texas Administrative Code (TAC) Chapters 115 and 117. In addition, sources undergoing construction or modification which are not subject to the best available control technology (BACT) or lowest achievable emission rate (LAER) major NSR requirements must still comply with Texas' BACT requirements in 30 TAC § 116.111(a)(2)(C). These additional limitations assist in ensuring that there is not backsliding from control requirements for VOC and $NO_x$.

*Use of actual to projected future actual test for non-utility (as well as utility) sources*

EPA's NSRR rules also allow the use of the projected future actual test for non-utility sources in determining NSR applicability. This option was previously allowed for utility sources only. This change is a voluntary alternative to the actual-to-potential to emit test. Either option may be used when determining project increases for use in determining the applicability of major NSR requirements. TCEQ implemented the EPA rule.

An applicant utilizing the actual-to-projected-actual test would not have submitted the information for the actual to potential to emit test since the information would be irrelevant to the review. TCEQ has no data currently available which would allow a comparison of the emission increases/decreases under the NSRR rules to what those emission changes would have been in the absence of NSRR. TCEQ is relying on EPA to provide guidance on how to properly project future emissions, how those emissions should be tracked, and which type of future emissions can be excluded for any project.

Adoption and implementation of the actual-to-projected-actual test is not expected to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the FCAA. In addition, these rules do not change existing requirements for obtaining offsets for nonattainment permitting and considering all sources for PSD permitting.

In addition, sources undergoing construction or modification which are not subject to the BACT or LAER major NSR requirements must still comply with Texas' BACT requirements in SIP-approved 30 TAC § 116.111(a)(2)(C). This backstop results in TCEQ's conclusion that changes to air quality as a result of implementing NSRR should be neutral with respect to reasonable further progress.

*Plant-wide Applicability Limit*

The Plant-wide Applicability Limit sets a cap for a site's emissions of a regulated pollutant. Changes made at the site are not subject to major NSR review as long as the emissions of the regulated pollutant remain below the PAL cap. EPA's PAL rules are a voluntary option that provides "the ability to manage facility-wide emissions without triggering major NSR review" which will facilitate the ability of companies "to respond rapidly to changing market

conditions."[10] EPA specifically stated that the PAL allows avoidance of the major NSR permitting process when a company makes "alterations to the facility or individual emission units."[11] When EPA adopted its PAL rules, both its Technical Support Document[12] and its Supplemental Analysis[13] provided EPA's technical background information used to support the rules; Appendix A to the Supplemental Analysis is the report of the "Flexible Permit Pilot" permit. EPA concluded that, overall, the use of emission caps in PAL-type permits would actually reduce emissions in various industrial categories for various pollutants, based on the real VOC reductions achieved from three specific industrial categories, and thus be environmentally beneficial in enforceable permits.[14]

In addition, the monitoring, recordkeeping, and reporting (MRR) requirements required to demonstrate compliance with the PAL may have the added benefit of optimizing operations due to improved monitoring. Optimization of operations generally has an associated reduction in air emissions which could result in a modest contribution toward reasonable further progress.

The characteristics of PALs provide benefits to both the public and the regulated entities that utilize them. These characteristics include: use of a cap for groups of emission sources on a pollutant specific basis, operational flexibility, regulatory certainty, no circumvention of major NSR, detailed MRR requirements, and environmental benefit. Texas has had a small number of sites take advantage of the PAL option under the federal NSRR rules, and only two were issued after the TCEQ adopted the rule amendments in 2011, one in Harris County and one in Jefferson County. This is an insignificant percentage of the number of permits currently authorized annually in Texas, which is typically more than 14,000 permits. Because TCEQ has issued only two PAL permits since the majority of the rules were adopted by TCEQ, no data exists to determine whether the PAL program could adversely affect air quality.

In addition, the PAL for a specific pollutant is based upon baseline actual emissions for that pollutant. Any future construction or modifications under the PAL which are not subject to the BACT or lowest achievable emission reduction major NSR requirements must still comply with Texas' BACT requirements in 30 TAC § 116.111(a)(2)(C). In some cases, controls beyond those accepted as BACT for minor NSR may be required to meet the PAL cap. Sources under a PAL located in the Beaumont-Port Arthur and Houston-Galveston-Brazoria areas are also subject to the stringent SIP requirements under 30 TAC Chapters 115 and 117. This backstop results in TCEQ's conclusion that changes to air quality as a result of implementing the PAL portion of NSRR will be neutral in affect to air quality reasonable further progress.

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[10] 67 *Fed. Reg.* 80186, 80189 (December 31, 2002).
[11] EPA's use of the term "facility" is understood to mean the entire plant site. In contrast, the Texas Clean Air Act defines "facility" very narrowly and it is analogous to the EPA term "emissions unit."
[12] Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations, United States Environmental Protection Agency, Office of Air Quality Planning and Standards (November 2002).
[13] New Source Review Improvements, Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules, United States Environmental Protection Agency (November 21, 2002).
[14] *Id.*, pp. 2, and 6-8, and Appendix A, Executive Summary, page 4.

*Specific Questions Raised by EPA Region 6*

*Whether TCEQ's Plant-wide Applicability Limit (PAL) Permits are Practically Enforceable*

A permit is practically enforceable if permit conditions establish clear legal obligations and allow compliance with those obligations to be verified. In its final rule adopting the PAL rules, EPA's notice discusses the MRR requirements for a PAL permit, and EPA characterized these requirements as addressing a number of issues associated with practical enforceability of PALs.[15] EPA requested TCEQ demonstrate that the TCEQ's PAL rules will result in PAL permits that are practically enforceable, because the permit provisions specify both a technically accurate limitation as well as the portions of the source subject to the limitation, the time period for the limitation, and the method to determine compliance, including appropriate MRR requirements. The TCEQ rules that satisfy the applicable federal PAL requirements, as established in EPA's rules, are as follows:

*Technically accurate limitation and identification of the portions of the source that are subject to the limitation.*

Texas established its PAL program based on 30 TAC §§ 116.180, 116.182, 116.186(a), and 116.188. These rules satisfy the Federal requirements in 40 CFR 51.165(f)(3)(i), (f)(4)(i)(A) & (E), & (f)(6)(1) and 51.166(w)(3)(i), (w)(4)(i)(a) & (e), & (w)(6)(1), and therefore render the program, and PAL permits issued under the program, practically enforceable.

*The time period for the limitation*

Texas rules state that the PAL limit must be met on a 12-month rolling average [30 TAC §§ 116.182(3) and 116.186(a)]. These rules meet the federal requirements in 40 CFR 51.165(f)(3)(i) and (f)(4)(i)(A) & (E) and 51.166(w)(3)(i) and (w)(4)(i)(a) & (e), and therefore render the program, and PAL permits issued under the program, practically enforceable.

*The method to determine compliance, including appropriate MRR*

Detailed MRR that is consistent with the Federal PAL requirements, and also meet the requirement for practical enforceability is found in 30 TAC § 116.186. Specifically, the requirements in §§ 116.186(b)(4), (b)(6), (b)(8), (b)(9) and (c) meet 40 CFR 51.165(f)(13)-(14) and 51.166(w)(13)-(14), and therefore render the program, and PAL permits issued under the program, practically enforceable.

*Whether the TCEQ rules meet 40 CFR 51.166(w)(7)(iv), 51.165(a)(1)(xxxv)(A)(2) and (B)(1), and 51.166(b)(47)(i)(a) and (ii)(a) with respect to inclusion of malfunction emissions.*

A PAL permit limit can be generally enforced like any other permit limit, and the TCEQ has authority to enforce all permit requirements; this authority is found in Tex. Water Code, Chapter 7, and Tex. Health & Safety Code §§ 382.011, 382.015, 382.016, 382.0515, 382.0516, 382.022, 382.023, and 382.085, as well as in certain rules found in 30 TAC Chapter 101, Subchapters A and F. In addition, TCEQ rule 30 TAC § 101.201 requires regulated entities,

[15] See 67 *Fed. Reg.* 80186, at 80211-80214 (December 31, 2002).

regardless of whether they have a PAL permit, to record (and in some cases report) emissions events, which includes unscheduled maintenance, startup, and shutdown (MSS) activity emissions. Emissions from malfunctions are unauthorized emissions as defined in 30 TAC § 101.1(107); therefore, they are unauthorized (non-compliant) emissions. Exceedances of a PAL limit, such as emissions from malfunctions, are unauthorized emissions and subject to enforcement. TCEQ represented to EPA Region 6 that unscheduled MSS activity emissions are functionally equivalent to EPA's definition of malfunction.[16] Finally, PAL permits are incorporated in TCEQ's Title V permits by reference. A citation for violating a limit in a PAL permit could be included in an enforcement case.

The TCEQ does not "reward" non-compliance by inclusion. Exclusion of these emissions when the PAL is established means that TCEQ's rules are more stringent than EPA's requirements. In addition, TCEQ does not include malfunction emissions as part of the calculation of baseline emissions or projected actual emissions [as those terms are defined in 30 TAC §§ 116.12(3)(E) and (29)]. This means that TCEQ is at least as stringent as or more stringent than EPA's requirement.

Furthermore, EPA has approved similar rules in other states. For example, South Carolina omitted the word "malfunction" from its definitions of "baseline actual emissions" and "projected actual emissions."[17] In its adoption of these definitions, the state said this omission was justified because the South Carolina Department of Health and Environmental Control had never permitted malfunction emissions, and concluded that there was no advantage to including malfunction emissions in either calculation. EPA concurred that omitting malfunctions does not lessen the stringency of South Carolina's NSR program.[18]

Similarly, the rules adopted by the Florida Department of Environmental Protection[19] do not require the inclusion of emissions associated with malfunction. Instead, Florida relies only on quantifiable emissions that can be verified, for both projected actual emissions and baseline actual emissions. Since this approach will not prevent malfunctions from being exceedances of applicable standards, and does not affect obligations regarding excess emissions related notifications required by state or federal law, EPA determined that this difference does not make Florida's program less stringent than the federal program.[20] TCEQ's similar approach is therefore also more stringent than the federal rules.

*Whether information generated by a monitoring system required by a PAL permit condition can meet the requirements for admissibility in a judicial proceeding*

Texas statutes and TCEQ rules adopted under those statutes which establish the jurisdiction of the TCEQ, as well as permit conditions, require owners and operators of facilities that may emit air contaminants, which are authorized for construction and operation, to maintain data

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[16] Letter from John Steib, Deputy Director, TCEQ Office of Compliance & Enforcement to John Blevins, Director, Compliance Assurance and Enforcement Division, USEPA, Region-6 Dallas, April 17, 2007.
[17] South Carolina Code Section R.61-62.1, Standard 7(b)(4) and (b)(4)(i)(a), and (b)(41) and (b)(41)(ii)(b), and Standard 7.1(b)(2) and (b)(2)(B)(i)(a), and (b)(11) and (b)(11)(B)(ii).
[18] Proposed approval 72 FR 52031, 52035 (Sept. 12, 2007); final approval 73 FR 31368 (June 2, 2008).
[19] Florida Administrative Code §62-210.200(36) and (244).
[20] Proposal approval 73 *Fed. Reg.* 18466, 18470-71 (April 4, 2008); approval 73 *Fed. Reg.* 36435 (June 27, 2008).

necessary to demonstrate compliance with the terms and conditions of their authorizations. That authority is found in Tex. Health & Safety Code §§ 382.011, 382.012, 382.014, 382.016, 382.051, 382.0513, 382.0514, and 382.0515; Tex. Water Code §§ 5.013(a)(11), 7.179, 7.180, and 7.181; and TCEQ rules 30 TAC §§ 116.111, 116.115 (which are, for the most part, SIP approved) and §§ 116.711 and 116.715. Additionally, the Texas Legislature has provided the TCEQ with the enforcement authority in Tex. Water Code Chapter 7 to initiate an action to enforce the statutes within the jurisdiction of the TCEQ, such as 30 TAC §§ 7.179, 7.180, and 7.181.

The TCEQ adopted the requirement that the Texas Rules of Evidence, as applied in nonjury civil cases in the district courts of this state, be followed in all hearings.[21] The initial factor affecting admissibility is relevance, and the relevance of offered evidence - evidence of non-compliance in an enforcement hearing - will support admissibility. However, if the data is not sufficient to support admissibility, or is non-existent, then the executive director may pursue an enforcement action for failing to maintain the data necessary to demonstrate compliance.

*Conclusion*

TCEQ remains obligated under its SIP and the FCAA to prevent emission increases due to any relaxation in requirements. The major NSR permitting program will continue to serve its intended role of assuring new and significantly modified sources are well controlled, as will the TCEQ's minor NSR program. And, although permitting is considered to be a control measure, NSR is not the primary control measure for attainment of the NAAQS. This backstop results in TCEQ's conclusion that changes to air quality as a result of implementing NSRR should be neutral with respect to attainment and maintenance of the NAAQS and reasonable further progress as required by the FCAA.

I am confident that the proposed rule changes together with the information submitted in this correspondence will ensure SIP approval of the rules adopted to implement NSR Reform. If you have any questions or need further information, please contact Steve Hagle, Deputy Director for TCEQ Office of Air.

Sincerely,

Zak Covar
Executive Director

cc: Richard Hyde, P.E., Deputy Executive Director
Ramiro Garcia Jr., Deputy Director, Office of Compliance and Enforcement
Steve Hagle, P.E., Deputy Director, Office of Air
Caroline Sweeney, Deputy Director, Office of Legal Services
Mike Wilson, P.E., Director, Air Permits Division, Office of Air

[21] 30 TAC § 80.127.

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only under Chapter 106 of this title; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with TCAA, §382.060, as that section existed prior to September 1, 1991.

(10) New facility--A facility for which construction is commenced after August 30, 1971, and no contract for construction was executed on or before August 30, 1971, and that contract specified a beginning construction date on or before February 29, 1972.

(11) New source--Any stationary source, the construction or modification of which is commenced after March 5, 1972.

(12) Nonattainment area--A defined region within the state which is designated by the EPA as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA, §107(d).

(13) Public notice--The public notice of application for a permit as required in this chapter.

(14) Qualified facility--An existing facility that satisfies the criteria of either paragraph (9)(D)(i) or (ii) of this section.

(15) Source--A point of origin of air contaminants, whether privately or publicly owned or operated.

Adopted September 15, 2010 Effective October 7, 2010

**§116.12. Nonattainment and Prevention of Significant Deterioration Review Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter B, Divisions 5 and 6 of this chapter (relating to Nonattainment Review Permits and Prevention of Significant Deterioration Review);

and Subchapter C, Division 1 of this chapter (relating to Plant-Wide Applicability Limits), have the following meanings, unless the context clearly indicates otherwise.

(1) Actual emissions--Actual emissions as of a particular date are equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during the 24-month period that precedes the particular date and that is representative of normal source operation, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plant-wide applicability limit. Instead, paragraph (3) of this section relating to baseline actual emissions shall apply for this purpose. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Allowable emissions--The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards specified in 40 Code of Federal Regulations Part 60 or 61;

(B) the applicable state implementation plan emissions limitation including those with a future compliance date; or

(C) the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

(3) Baseline actual emissions--The rate of emissions, in tons per year, of a federally regulated new source review pollutant.

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The executive director shall allow the use of a

different time period upon a determination that it is more representative of normal source operation.

(B) For an existing facility (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the facility actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received for a permit. The rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply with the exception of those required under 40 Code of Federal Regulations Part 63, had such major stationary source been required to comply with such limitations during the consecutive 24-month period.

(C) For a new facility, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and for all other purposes during the first two years following initial operation, shall equal the unit's potential to emit.

(D) The actual average rate shall be adjusted downward to exclude any non-compliant emissions that occurred during the consecutive 24-month period. For each regulated new source review pollutant, when a project involves multiple facilities, only one consecutive 24-month period must be used to determine the baseline actual emissions for the facilities being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount. Baseline emissions cannot occur prior to November 15, 1990.

(E) The actual average emissions rate shall include fugitive emissions to the extent quantifiable. Until March 1, 2016, emissions previously demonstrated as resulting from planned maintenance, startup, or shutdown activities; historically unauthorized; and subject to reporting under Chapter 101 of this title (relating to General Air Quality Rules) shall be included to the extent that they have been authorized, or are being authorized.

(4) Basic design parameters--For a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality

based on British thermal units content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit. The basic design parameters for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator shall consider the primary product or primary raw material when selecting a basic design parameter. The owner or operator may propose an alternative basic design parameter for the source's process units to the executive director if the owner or operator believes the basic design parameter as defined in this paragraph is not appropriate for a specific industry or type of process unit. If the executive director approves of the use of an alternative basic design parameter, that basic design parameter shall be identified and compliance required in a condition in a permit that is legally enforceable.

(A) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter.

(B) If design information is not available for a process unit, the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(C) Efficiency of a process unit is not a basic design parameter.

(5) Begin actual construction--In general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(6) Building, structure, facility, or installation--All of the pollutant-emitting activities that belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are considered to be part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(7) Carbon dioxide equivalent ($CO_2$ e) emissions--shall represent an amount of greenhouse gases (GHGs) emitted, and shall be computed by multiplying the mass amount of emissions in tons per year (tpy) for the GHGs, as defined in §101.1 of this title (relating to Definitions), by the gas's associated global warming potential as published in 40 Code of Federal Regulations Part 98, Subpart A, Table A-1 - Global Warming Potentials, and summing the resultant values.

(8) Clean coal technology--Any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(9) Clean coal technology demonstration project--A project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(10) Commence--As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(11) Construction--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(12) Contemporaneous period--For major sources the period between:

(A) the date that the increase from the particular change occurs; and

(B) 60 months prior to the date that construction on the particular change commences.

(13) *De minimis* threshold test (netting)--A method of determining if a proposed emission increase will trigger nonattainment or prevention of significant deterioration review. The summation of the proposed project emission increase in tons per year with all other creditable source emission increases and decreases during the contemporaneous period is compared to the significant level for that pollutant. If the significant level is exceeded, then prevention of significant deterioration and/or nonattainment review is required.

(14) Electric utility steam generating unit--Any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is included in determining the electrical energy output capacity of the affected facility.

(15) Federally regulated new source review pollutant--As defined in subparagraphs (A) - (E) of this paragraph:

(A) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the United States Environmental Protection Agency;

(B) except for greenhouse gases, any pollutant that is subject to any standard promulgated under Federal Clean Air Act (FCAA), §111;

(C) any Class I or II substance subject to a standard promulgated under or established by FCAA, Title VI;

(D) any pollutant that otherwise is subject to regulation under the FCAA; except that any or all hazardous air pollutants either listed in FCAA, §112 or added to the list under FCAA, §112(b)(2), which have not been delisted under FCAA, §112(b)(3), are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under FCAA, §108; or

(E) greenhouse gases that meet or exceed the thresholds established in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

(16) Greenhouse gases (GHGs)--as defined in §101.1 of this title (relating to Definitions).

(17) Lowest achievable emission rate--For any emitting facility, that rate of emissions of a contaminant that does not exceed the amount allowable under applicable new source performance standards promulgated by the United States Environmental Protection Agency under 42 United States Code, §7411, and that reflects the following:

(A) the most stringent emission limitation that is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation that is achieved in practice by a specific class or category of facilities, whichever is more stringent.

(18) Major facility--Any facility that emits or has the potential to emit 100 tons per year or more of the plant-wide applicability limit (PAL) pollutant in an attainment area; or any facility that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant in Table I of this section for nonattainment areas.

(19) Major stationary source--Any stationary source that emits, or has the potential to emit, a threshold quantity of emissions or more of any air contaminant (including volatile organic compounds (VOCs)) for which a national ambient air quality standard has been issued, or greenhouse gases. The major source thresholds are identified in Table I of this section for nonattainment pollutants and the major source thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations (CFR) §51.166(b)(1). For greenhouse gases, the major source thresholds are specified in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources). A source that emits, or has the potential to emit a federally regulated new source review pollutant at levels greater than those identified in 40 CFR §51.166(b)(1) is considered major for all prevention of significant deterioration pollutants. A major stationary source that is major for VOCs or nitrogen oxides is considered to be major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 CFR §51.165(a)(1)(iv)(C).

(20) Major modification--As follows.

(A) Any physical change in, or change in the method of operation of a major stationary source that causes a significant project emissions increase and a significant net emissions increase for any federally regulated new source review pollutant. At a stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified for a major source. At an existing major stationary source, the increase must equal or exceed that specified for a major modification to be significant. The major source and significant thresholds are provided in Table I of this section for nonattainment pollutants. The major source and significant thresholds for prevention of significant deterioration pollutants are identified in 40 Code of Federal Regulations §51.166(b)(1) and (23), respectively and in §116.164 of this title (relating to Prevention of Significant Deterioration Applicability for Greenhouse Gases Sources).

Figure: 30 TAC §116.12(20)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

| POLLUTANT designation[1] | MAJOR SOURCE tons/year | SIGNIFICANT LEVEL[2] tons/year | OFFSET RATIO minimum |
|---|---|---|---|
| OZONE (VOC, $NO_X$)[3] | | | |
| I marginal | 100 | 40 | 1.10 to 1 |
| II moderate | 100 | 40 | 1.15 to 1 |
| III serious | 50 | 25 | 1.20 to 1 |
| IV severe | 25 | 25 | 1.30 to 1 |
| CO | | | |
| I moderate | 100 | 100 | 1.00 to 1[4] |
| II serious | 50 | 50 | 1.00 to 1[4] |
| $SO_2$ | 100 | 40 | 1.00 to 1[4] |
| $PM_{10}$ | | | |
| I moderate | 100 | 15 | 1.00 to 1[4] |

| | | | |
|---|---|---|---|
| II serious | 70 | 15 | 1.00 to 1[4] |
| $NO_x$[5] | 100 | 40 | 1.00 to 1[4] |
| Lead | 100 | 0.6 | 1.00 to 1[4] |

[1] Texas nonattainment area designations as defined in §101.1 of this title (relating to Definitions).

[2] The significant level is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of $NO_X$ and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the significant level listed in this table.

[3] VOC and $NO_X$ are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title.

[4] The offset ratio is specified to be greater than 1.00 to 1.
VOC = volatile organic compounds
$NO_X$ = oxides of nitrogen
$NO_2$ = nitrogen dioxide
CO = carbon monoxide
$SO_2$ = sulfur dioxide
$PM_{10}$ = particulate matter with an aerodynamic diameter less than or equal to ten microns

[5] Applies to the National Ambient Air Quality Standard $NO_2$.

(B) A physical change or change in the method of operation shall not include:

(i) routine maintenance, repair, and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act;

Figure: 30 TAC §116.12(20)(A)

**TABLE I**
**MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS**

| POLLUTANT designation[1] | MAJOR SOURCE tons/year | SIGNIFICANT LEVEL[2] tons/year | OFFSET RATIO minimum |
|---|---|---|---|
| OZONE (VOC, $NO_X$)[3] | | | |
| I marginal | 100 | 40 | 1.10 to 1 |
| II moderate | 100 | 40 | 1.15 to 1 |
| III serious | 50 | 25 | 1.20 to 1 |
| IV severe | 25 | 25 | 1.30 to 1 |
| CO | | | |
| I moderate | 100 | 100 | 1.00 to 1[4] |
| II serious | 50 | 50 | 1.00 to 1[4] |
| $SO_2$ | 100 | 40 | 1.00 to 1[4] |
| $PM_{10}$ | | | |
| I moderate | 100 | 15 | 1.00 to 1[4] |
| II serious | 70 | 15 | 1.00 to 1[4] |
| $NO_x$[5] | 100 | 40 | 1.00 to 1[4] |
| Lead | 100 | 0.6 | 1.00 to 1[4] |

[1] Texas nonattainment area designations as defined in §101.1 of this title (relating to Definitions).

[2] The significant level is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of $NO_X$ and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the significant level listed in this table.

[3] VOC and $NO_X$ are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title.

[4] The offset ratio is specified to be greater than 1.00 to 1.
VOC = volatile organic compounds
$NO_X$ = oxides of nitrogen
$NO_2$ = nitrogen dioxide
CO = carbon monoxide
$SO_2$ = sulfur dioxide
$PM_{10}$ = particulate matter with an aerodynamic diameter less than or equal to ten microns

[5] Applies to the National Ambient Air Quality Standard for $NO_2$.

(iii) use of an alternative fuel by reason of an order or rule of 42 United States Code, §7425;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under this chapter;

(vi) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition that was established after December 21, 1976);

(vii) any change in ownership at a stationary source;

(viii) any change in emissions of a pollutant at a site that occurs under an existing plant-wide applicability limit;

(ix) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(x) for prevention of significant deterioration review only, the installation or operation of a permanent clean coal technology demonstration project that constitutes re-powering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(xi) for prevention of significant deterioration review only, the reactivation of a clean coal-fired electric utility steam generating unit.

(21) Necessary preconstruction approvals or permits--Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the applicable state implementation plan.

(22) Net emissions increase--The amount by which the sum of the following exceeds zero: the project emissions increase plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases. Baseline actual emissions shall be used to determine emissions increases and decreases.

(A) An increase or decrease in emissions is creditable only if the following conditions are met:

(i) it occurs during the contemporaneous period;

(ii) the executive director has not relied on it in issuing a federal new source review permit for the source and that permit is in effect when the increase in emissions from the particular change occurs; and

(iii) in the case of prevention of significant deterioration review only, an increase or decrease in emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(B) An increase in emissions is creditable if it is the result of a physical change in, or change in the method of operation of a stationary source only to the extent that the new level of emissions exceeds the baseline actual emission rate. Emission increases at facilities under a plant-wide applicability limit are not creditable.

(C) A decrease in emissions is creditable only to the extent that all of the following conditions are met:

(i) the baseline actual emission rate exceeds the new level of emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) the executive director has not relied on it in issuing a prevention of significant deterioration or a nonattainment permit;

(iv) the decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(v) in the case of nonattainment applicability analysis only, the state has not relied on the decrease to demonstrate attainment or reasonable further progress.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(23) Offset ratio--For the purpose of satisfying the emissions offset reduction requirements of 42 United States Code, §7503(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total emissions increases of such pollutants. The minimum offset ratios are included in Table I of this section under the definition of major modification. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit.

(24) Plant-wide applicability limit--An emission limitation expressed, in tons per year, for a pollutant at a major stationary source, that is enforceable and established in a plant-wide applicability limit permit under §116.186 of this title (relating to General and Special Conditions).

(25) Plant-wide applicability limit effective date--The date of issuance of the plant-wide applicability limit permit.

(26) Plant-wide applicability limit major modification--Any physical change in, or change in the method of operation of the plant-wide applicability limit source that causes it to emit the plant-wide applicability limit pollutant at a level equal to or greater than the plant-wide applicability limit.

(27) Plant-wide applicability limit permit--The new source review permit that establishes the plant-wide applicability limit.

(28) Plant-wide applicability limit pollutant--The pollutant for which a plant-wide applicability limit is established at a major stationary source.

(29) Potential to emit--The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable

operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for a stationary source.

(30) Project net--The sum of the following: the project emissions increase, minus any sourcewide creditable emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Baseline actual emissions shall be used to determine emissions increases and decreases. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section.

(31) Projected actual emissions--The maximum annual rate, in tons per year, at which an existing facility is projected to emit a federally regulated new source review pollutant in any rolling 12-month period during the five years following the date the facility resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the facility's design capacity or its potential to emit that federally regulated new source review pollutant. In determining the projected actual emissions, the owner or operator of the major stationary source shall include unauthorized emissions from planned maintenance, startup, or shutdown activities, which were historically unauthorized and subject to reporting under Chapter 101 of this title (relating to General Air Quality Rules), to the extent they have been authorized, or are being authorized; and fugitive emissions to the extent quantifiable; and shall consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved state implementation plan.

(32) Project emissions increase--The sum of emissions increases for each modified or affected facility determined using the following methods:

(A) for existing facilities, the difference between the projected actual emissions and the baseline actual emissions. In calculating any increase in emissions that results from the project, that portion of the facility's emissions following the project that the facility could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth may be excluded from the project emission increase. The potential to emit from the facility

following completion of the project may be used in lieu of the projected actual emission rate; and

(B) for new facilities, the difference between the potential to emit from the facility following completion of the project and the baseline actual emissions.

(33) Replacement facility--A facility that satisfies the following criteria:

(A) the facility is a reconstructed unit within the meaning of 40 Code of Federal Regulations §60.15(b)(1), or the facility replaces an existing facility;

(B) the facility is identical to or functionally equivalent to the replaced facility;

(C) the replacement does not alter the basic design parameters of the process unit;

(D) the replaced facility is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable. If the replaced facility is brought back into operation, it shall constitute a new facility. No creditable emission reductions shall be generated from shutting down the existing facility that is replaced. A replacement facility is considered an existing facility for the purpose of determining federal new source review applicability.

(34) Secondary emissions--Emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

(35) Significant facility--A facility that emits or has the potential to emit a plant-wide applicability limit (PAL) pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant.

(36) Small facility--A facility that emits or has the potential to emit the plant-wide applicability limit (PAL) pollutant in an amount less than the significant level for that PAL pollutant.

(37) Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under 42 United States Code, §§7401 *et seq*.

(38) Temporary clean coal technology demonstration project--A clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

Adopted March 26, 2014 Effective April 17, 2014

~~**§116.13. Flexible Permit Definitions.**~~

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

~~(1) Emission cap - Emission limit for a specific air contaminant based on total emissions of that pollutant from all facilities that are included in a flexible permit.~~

~~(2) Expected maximum capacity - The maximum capacity of a facility according to its physical and operational design and planned operation.~~

~~(3) Individual emission limitation - Emission limit for a specific air contaminant for an individual facility.~~

~~Adopted July 2, 2014~~ ~~Effective July 31, 2014~~

~~**§116.14. Standard Permit Definitions.**~~

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

~~(1) Off-plant receptor - For the purposes of Subchapter F of this chapter (relating to Standard Permits) only, shall be defined as any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or owner of the property upon which the facilities are located.~~