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TEXAS AIR CONTROL BOARD
REGULATION VI
(31 TAC CHAPTER 116)
CONTROL OF AIR POLLUTION
BY PERMITS FOR NEW CONSTRUCTION
OR MODIFICATION

REVISED MARCH 20, 1981

Government Documents

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Preface to Revised Regulation VI

This revision incorporates changes adopted by the Texas Air Control Board on March 20, 1981. Pages are dated so that revised pages can be identified.

If you have any questions or suggestions concerning the regulation, please contact Beverly Fowler in the Emissions Standards and Engineering Section of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711.

Permits

Regulation VI

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PERMITS

§116.1(131.08.00.001). Construction Permit.

Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state must obtain a construction permit from the Texas Air Control Board before any actual work is begun on the facility. If a permit to construct is issued by the Board, the person in charge of the facility must apply for an operating permit within 60 days after the facility has begun operation, unless this 60-day period has been extended by the Executive Director.

§116.2(131.08.00.002). Responsibility for Obtaining Permit.

The owner of the facility or the operator of the facility authorized to act for the owner is responsible for applying for and obtaining a permit to construct and operate.

§116.3(131.08.00.003). Consideration for Granting Permits to Construct and Operate.

(a) Permit to construct. In order to be granted a permit to construct, the owner or operator of the proposed facility shall submit information to the Texas Air Control Board, which will demonstrate that all of the following are met:

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(1) The emissions from the proposed facility will comply with all rules and regulations of the Texas Air Control Board and with the intent of the Texas Clean Air Act, including protection of the health and physical property of the people.

(2) The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the Executive Director.

(3) The proposed facility will utilize the best available control technology, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(4) The emissions from the proposed facility will meet, at least, the requirements of any applicable new source performance standards promulgated by the Environmental Protection Agency pursuant to authority granted under section 111 of the Federal Clean Air Act, as amended.

(5) The emissions from the proposed facility will meet, at least, the requirements of any applicable emission standard for hazardous air pollutants promulgated by the Environmental Protection Agency pursuant to authority granted under section 112 of the Federal Clean Air Act, as amended.

(6) The proposed facility will achieve the performance specified in the application for a permit to construct. The applicant may be required to submit additional engineering

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data after a permit to construct has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the application for a permit to construct.

(7) All requirements of section 129(a)(1) of the Clean Air Act Amendments of 1977 (Pub.L.No. 95-95). This provision shall not apply to new or modified facilities for which construction permits are issued after June 30, 1979.

(8) After June 30, 1979, the owner or operator of a proposed new facility which is a major stationary source of volatile organic compound emissions or which is a facility that will undergo a major modification with respect to VOC emissions and which is to be located in any area designated as nonattainment for ozone in accordance with section 107 of the Federal Clean Air Act shall demonstrate that the following additional requirements are met:

(A) The proposed facility will comply with the lowest achievable emissions rate (LAER) as defined in Chapter 101 of this title (relating to General Rules).

(B) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state are in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

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(9) After June 30, 1979, the owner or operator of a proposed new facility which is a major stationary source of volatile organic compounds (VOC) or which is a facility that will undergo a major modification with respect to VOC emissions, and which is to be located in Bexar, Dallas, El Paso, Harris, Nueces, or Tarrant County will provide information concerning his expected emissions to enable the Executive Director to determine that by the time the facility is to commence operation, total allowable emissions from existing facilities, from the proposed facility, and from new or modified facilities which are not major sources in the area will be sufficiently less than the total emissions from existing sources allowed in the area under the applicable State Implementation Plan (SIP) as promulgated by the Administrator of the U.S. Environmental Protection Agency in Subpart SS, Part 52, Title 40, Code of Federal Regulations prior to the application for the construction permit so as to represent reasonable further progress as defined in Chapter 101 of this title (relating to General Rules).

(10) The owner or operator of a proposed facility which will be a major stationary source of VOC emissions or will undergo a major modification and is to be located in any area designated as nonattainment for ozone in accordance with section 107 of the Federal Clean Air Act for which regulations and a control strategy providing for attainment of the standard have not been approved by the U.S. Environmental Protection Agency shall demonstrate that at the time that the facility is to commence operation, a net decrease in total allowable VOC emissions in the area has been pro-

vided taking into account any increases in emissions resulting from operation of the proposed new facility or modification.

(11) After June 30, 1979, the owner or operator of a proposed new facility to be located anywhere within the state that is a major stationary source of emissions of any air contaminant (other than volatile organic compounds-VOC) for which a national ambient air quality standard has been issued, or is a facility that will undergo a major modification with respect to emissions of any air contaminant (other than VOC), must meet the following additional requirements if the ambient air quality impact of the source's emissions would exceed a de minimis impact level as defined in §101.1 of the General Rules (relating to Definitions) in any area where the standard is exceeded or predicted to be exceeded.

(A) The proposed facility will comply with the lowest achievable emissions rate (LAER) as defined in §101.1 of this title (relating to Definitions).

(B) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state are to be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(C) By the time the facility is to commence operation, total allowable emissions from existing facilities

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which have more than a de minimis impact on air quality in the same area as the proposed facility, from the proposed facility, and from new or modified facilities which are not major sources but which will have more than a de minimis impact on air quality in the same area as the proposed facility, will not cause the national air quality standard for that contaminant to be exceeded at any location and will not have more than a de minimis impact on air quality at any location where the standard is exceeded.

(12) The owner or operator of a proposed new facility in a designated nonattainment area which will be a major stationary source or a major modification of an existing facility for any air contaminant other than volatile organic compounds for which a national ambient standard has been issued must meet the following additional requirements regardless of the degree of impact of its emissions on ambient air quality if the facility is located in a designated nonattainment area, and is located on, or is contiguous to (except for intervening roadways) any property on which an ambient air quality standard is actually exceeded:

(A) The proposed facility will comply with the lowest achievable emissions rate (LAER) as defined in §101.1 of this title (relating to Definitions) for the non-attaining pollutants.

(B) All major stationary sources owned or operated by the applicant (or by any person controlling,

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controlled by, or under common control with the applicant) in the state are to be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(C) At the time the facility commences operation, a net decrease in total allowable emissions in the area has been provided notwithstanding any increases in emissions resulting from operation of the proposed new facility or modification.

(b) Permit to operate. In order to be granted a permit to operate, the owner of the facility shall demonstrate that:

(1) The facility is complying with the rules and regulations of the Texas Air Control Board and the intent of the Texas Clean Air Act.

(2) The facility has been constructed and is being operated in accordance with the requirements for and conditions contained in the permit to construct.

(3) The facility is being operated in accordance with any applicable new source performance standards promulgated by the Environmental Protection Agency pursuant to authority granted under section 111 of the Federal Clean Air Act as amended.

(4) The facility is being operated in accordance with any applicable National Emission Standard for Hazardous

Air Pollutants promulgated by the Environmental Protection Agency pursuant to authority granted under section 112 of the Federal Clean Air Act as amended.

(c) Emission reductions: offset. At the time of application for a construction permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the Executive Director to use such emission reductions to offset emissions expected from the facility for which the permit is sought provided that the following conditions are met:

(1) The emission reductions are not required by any provision of the Texas State Implementation Plan as promulgated by the Administrator of the U.S. Environmental Protection Agency in Subpart SS, Part 52, Title 40, Code of Federal Regulations, nor by any other federal regulation under the Federal Clean Air Act as amended such as New Source Performance Standards.

(2) The applicant furnished documentation at the time of his permit application to substantiate his claim of emission reductions previously effected. The following information must be included in the documentation:

(A) Location and identity of the source(s) where emissions are reduced.

(B) Chemical composition of emissions reduced.

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(C) Date(s) when emission reductions occurred.

(D) Amount of emission reductions expressed in rates of tons per year and in pounds per hour.

(E) A complete description of the reduction method (i.e., source shut-down, process or operational change, type of control device, etc.).

(F) A certification by the applicant that the emission reductions have in fact been achieved and that the same reductions have not been used previously and will not be used subsequently to offset another source.

(G) Any other pertinent detailed descriptive information that may be requested by the Executive Director.

(d) Determination by Executive Director. The Executive Director may grant authority to a permit applicant to use prior emission reductions and emission reductions granted to the applicant by another entity (either public or private) in accordance with subsection (c) of this section if he determines that the prior emission reductions have, in fact, occurred and, when considered with other emission reductions that may be required by the permit as well as contaminants that will be emitted by the new source, will result in compliance with subsection (a)(10), (11), and/or (12)(C) of this section (whichever is applicable) in the area where the new source is to be located. Prior as well as future

emission reductions to be used as offset will be made conditions for granting authority to construct the proposed new source and will be enforced.

(e) Records. The Executive Director will maintain no records of emission offset credits claimed by an applicant in accordance with subsection (c) of this section other than those contained in permit application and permit files. The applicant shall maintain all records necessary to substantiate claims of emission reductions and shall make such records available for inspection upon request of the Executive Director.

(f) Effective date. This amended section shall be effective 30 days after the filing of certified copies in the Office of the Secretary of State.

§116.4(131.08.00.004). Special Conditions.

Permits to construct and operate may contain general and special conditions. The holders of construction and operating permits shall comply with any and all such conditions.

§116.5(131.08.00.005). Representations in Application for Permit.

All representations with regard to construction plans and operation procedures in an application for a permit to construct or a permit to operate become conditions upon which a subsequent permit to construct or operate are issued.

It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions unless he first makes application to the Executive Director to amend his permit in that regard and such amendment is approved by the Executive Director.

§116.6(131.08.00.006). Exemptions.

Pursuant to section 3.27(a) of the Texas Clean Air Act, a permit to construct and a permit to operate shall not be required for those sources exempted by the Executive Director of the Texas Air Control Board because such sources will not make a significant contribution of air contaminants to the atmosphere. A list of exemptions is available upon request from the Executive Director of the Board.

§116.7(131.08.00.007). Request for Exemptions.

For sources not currently on the exemption list specified in §116.6 of this title (relating to Exemptions), any person may request, in writing, the Executive Director to exempt a facility or type of facility. Unless a facility is exempted by the Executive Director of the Texas Air Control Board on the basis that such source will not make a significant contribution of air contaminants to the atmosphere, a permit to construct and operate must be obtained in accordance with the requirements of sections 3.27 and 3.28 of the Texas Clean Air Act.

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§116.8(131.08.00.008). Local Air Pollution Control Agencies.

Installations exempted by the Texas Air Control Board may be required by local air pollution control agencies to receive a permit or permits from that agency, or register with that agency.

§116.9(131.08.00.009). Effective Date.

The rules contained in this chapter shall be effective 30 days after filing with the Secretary of State, unless otherwise specified.

§116.10(131.08.00.010). Public Notification and Comment Procedure.

(a) Public notification procedures.

(1) General requirement. Within 30 days of receipt of a completed construction permit application, as determined by the Executive Director of the Texas Air Control Board, the Executive Director shall mail a written notification to the permit applicant acknowledging receipt of the application, stating his preliminary determination to issue or not issue the permit, and requiring the applicant to provide public notice of the proposed construction which shall include the information specified in §116.10(a)(3). The applicant shall provide such notification using each of the methods specified in §116.10(a)(3) and (4). The Executive Director may specify that additional information needed to

satisfy public notice requirements of 40 CFR 52.21 also be included in the notice published pursuant to §116.10(a)(3).

(2) Availability of application for review. The Executive Director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the TACB's Austin offices and at the appropriate TACB regional office in the region where construction is proposed throughout the comment period established in the notice published pursuant to §116.10(a)(3).

(3) Publication in public notices section of newspaper. At the applicants expense, notice of intent to construct shall be published in the public notice section of two successive issues of a newspaper of general circulation in the county where the proposed facility is to be located. The notice shall contain the following information:

- (A) Permit application number
- (B) Company name
- (C) Type of facility
- (D) Location of facility
- (E) Contaminants to be emitted
- (F) Preliminary determination of the Executive Director to issue or not issue the permit
- (G) Location and availability of copies of the completed permit application and

- the TACB's preliminary analyses thereof
- (H) Public comment period
 - (I) Procedure for submission of public comments concerning the proposed construction.

(4) Publication elsewhere in the newspaper. Another notice with a size of at least 7.5 by 12.5 centimeters (three by five inches) shall be published in a prominent location elsewhere in the same issues of the newspaper and shall contain the information specified in subparagraphs (A) thru (D) of §116.10(a)(3) and note that additional information is contained in the notice published pursuant to §116.10(a)(3) in the public notice section of the same issue.

(5) Notification of Texas Air Control Board and others. When newspaper notices are published in accordance with paragraphs (3) and (4) of this subsection, the permit applicant shall furnish a copy of such notices and date of publication to the Texas Air Control Board in Austin, Texas; the Environmental Protection Agency Regional Administrator in Dallas, Texas; all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; and the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility.

(6) Exemption of previously permitted facilities.

(A) Upon written request by the owner or operator of a facility which previously has received a permit

from the Texas Air Control Board, the Executive Director or his designated representative may exempt the relocation of such facility from the requirements of this section if he finds:

(i) no indication that operation of the facility at the proposed new location will significantly affect ambient air quality; and

(ii) no indication that operation of the facility at the proposed new location will create a nuisance.

(B) Upon written request by the new owner of a facility which previously has received a permit from the Texas Air Control Board, the Executive Director may exempt the change of ownership of the facility from the requirements of this rule if he finds:

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

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

(b) Comment procedures.

(1) Comment period. Interested persons may submit written comments on the construction permit application and on the Executive Director's preliminary decision to issue or not to issue the permit to the Executive Director. All such comments must be received in writing within 30 days

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of the last publication date of the notices specified in subsections (a)(3) and (a)(4) of this section.

(2) Consideration of comments. All written comments received by the Executive Director during the period specified in paragraph (1) of this subsection shall be considered in determining whether to issue or not to issue the permit. The Executive Director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the Texas Air Control Board and appropriate regional office.

(c) Notification of final action.

(1) Notification of applicant. The Executive Director shall notify the applicant for a construction permit as expeditiously as possible of his final decision to grant or deny the permit.

(2) Notification of commenters. Persons submitting written comments in accordance with subsection (b)(1) of this section or persons submitting written request to be notified of the final Agency action within the comment period specified in subsection (b)(1) of this section will be notified of the Executive Director's final decision at the same time that the applicant is notified.

(d) Notification of new determinations as to best available control technology. If the requirements of any permit

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will incorporate a new determination of best available control technology pursuant to §116.3(a)(6) of this title (relating to Consideration for Granting a Permit to Construct and Operate) which may affect a class or category of sources, the Executive Director shall so notify the public by publication of a notice in the Texas Register at least 15 days prior to the issuance of any such permit.

(e) Effective date. This section and amendments thereto shall be effective 120 days after the filing of certified copies in the Office of the Secretary of State and shall apply only to applications for permits to construct received on or after the effective date.

Original Regulation:

Date Adopted: April 21, 1971

Date Filed with the Secretary of State: May 18, 1971

Date Effective: June 18, 1971

Revised Regulation:

Date Adopted: January 26, 1972

Date Filed with the Secretary of State: February 4, 1972

Date Effective: March 5, 1972

Revised Regulation:

Date Adopted: July 27, 1972

Date Filed with the Secretary of State: August 1, 1972

Date Effective: August 21, 1972

Revised Regulation:

Date Adopted: March 27, 1975

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Date Effective: April 27, 1975

Amendment of §116.3(131.08.00.003):

Date Adopted: January 9, 1978

Date Filed with the Secretary of State: January 13, 1978

Date Effective: February 12, 1978

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Addition of §116.10(131.08.00.010):

Date Adopted: May 19, 1978

Date Filed with the Secretary of State: June 2, 1978

Date Effective: October 2, 1978

Amendment of §116.3(131.08.00.003) and §116.9(131.08.00.009):

Date Adopted: March 30, 1979

Date Filed with the Secretary of State: April 6, 1979

Date Effective: May 6, 1979

Amendment of §116.3(131.08.00.003):

Date Adopted: October 19, 1979

Date Filed with the Secretary of State: October 26, 1979

Date Effective: November 25, 1979

Amendment of §116.3(131.08.00.003):

Date Adopted: July 11, 1980

Date Filed with the Secretary of State: August 1, 1980

Date Effective: August 22, 1980

Amendment of §116.3(131.08.00.003) and §116.10(131.08.00.010):

Date Adopted: March 20, 1981

Date Filed with the Secretary of State: March 26, 1981

Date Effective: April 16, 1981

March 20, 1981