

CHANGES TO QUALIFIED FACILITIES (SB 1126)

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BACKGROUND:

OVERVIEW OF SB 1126

IN 1995, THE TEXAS LEGISLATURE AMENDED THE TEXAS CLEAN AIR ACT (TCAA), ENACTING TWO SIGNIFICANT PIECES OF LEGISLATION, SENATE BILLS (SB) 1125 AND 1126. SB 1125 LIMITS THE TCEQ AUTHORITY IN REQUIRING ADDITIONAL POLLUTION CONTROL EQUIPMENT AS A RESULT OF PERMIT RENEWAL APPLICATION REVIEWS. SB 1126 REVISED THE DEFINITION OF “MODIFICATION OF EXISTING FACILITY,” WHICH CHANGES THE FACTORS USED TO DETERMINE WHETHER A MODIFICATION FOR STATE PERMITTING PURPOSES HAS OCCURRED. IN 1996, 30 TAC, CHAPTER 116 WAS REVISED TO INCORPORATE THESE LEGISLATIVE CHANGES.

SB 1126 exempts from the definition of “modification” certain changes to “qualified facilities”. Qualified facilities are those facilities that are authorized under 30 TAC Chapters 116 or 106 within 120 months of a proposed change or used control technology at least as stringent as BACT approved within the last 120 month by the TCEQ. The intent is to allow changes to qualified facilities, provided there is no net increase in allowable emissions as a result of the change(s).

GENERAL REQUIREMENTS

The general requirements for an SB 1126 change are stated in Rule 116.116(e), as follows:

1. The facility must be authorized under Chapter 116 or 106, and any changes must not trigger the major modification review under Nonattainment or Prevention of Significant Deterioration (PSD) permit requirements.
2. Prior to making changes under this section, the owner or operator must submit a Form PI-E (Notification of Changes to Qualified Facilities), as well as a permit revision request for facilities authorized under Chapter 116 or emissions certification request for facilities

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authorized under Chapter 106. The authorizations under Chapters 116 or 106 must have been approved within 120 months of the proposed change, or the facility undergoing the change must use control technology at least as effective as 10-year-old best available control technology (BACT).

- 3.** The physical or operational change(s) to the qualified facility must not result in a net increase in the allowable emissions of any air contaminant or result in the emission of any air contaminant not previously emitted.
- 4.** In making the determination in paragraph (3) above, the effect on emissions of the following shall be considered:
 - A.** Any air pollution control method applied to the qualified facility;
 - B.** Any decrease in allowable emissions from other qualified facilities at the same commission air quality account that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and
 - C.** Any decrease in actual emissions from other qualified facilities at the same commission account that are not included in subparagraph (B) of this paragraph.
- 5.** The determination in paragraph (3) of this subsection shall be based on the allowable emissions for air contaminant categories and any allowable emissions for individual compounds. If a physical or operational change would result in emissions of an air contaminant category or compound above the allowable emissions for that air contaminant category or compound, there must be an equivalent decrease in emissions at the same facility or a different facility at the same account.
 - A.** The equivalent decrease in emissions shall be based on the same time periods (e.g., hourly and 12-month rolling average rates) as the allowable emissions for the facility at which the change will occur.
 - B.** Emissions of different compounds within the same contaminant category may be interchanged. However, the relative toxicities of the compounds must be considered. The substitution of currently regulated VOCs for compounds that have been removed for the VOC list by EPA is prohibited.
 - C.** For allowable emissions for individual compounds, any interchange shall adjust the emission rates for the different compounds in accordance with the ratio of the effects screening levels of the compounds. The effects screening levels shall be determined by the Executive Director.
 - D.** For allowable emissions for air contaminant categories, interchanges shall use the unadjusted emission rates for the different compounds.
 - E.** The facility owner or operator shall demonstrate that the change will not adversely affect air quality.
 - F.** An air contaminant category is a group of related compounds, such as volatile organic compounds, particulate matter, nitrogen oxides, and sulfur compounds.
- 6.** Persons making changes to qualified facilities under this subsection shall comply with the applicable requirements of Section 116.117 (relating to Documentation and Notification of Changes to Qualified Facilities).
- 7.** As used in this subsection, the term “physical and operational change” does not include:
 - A.** Construction of a new facility; or
 - B.** changes to procedures regarding monitoring, determination of emissions, and recordkeeping that are required by a permit.

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8. Additional air pollution control methods may be implemented for the purpose of making a facility a qualified facility. The implementation of any additional control methods to qualify a facility shall be subject to the requirements of this chapter. The owner or operator shall:
 - A. use additional control methods that are as effective as BACT required at the time the additional control methods are implemented; or
 - B. demonstrate that the additional control methods, although not as effective as BACT, were implemented to comply with a law, rule, order, permit, or implemented to resolve a documented citizen complaint.
9. For the purposes of this subsection and Section 116.117, the following subparagraphs apply:
 - A. Intraplant trading means the consideration of decreases in allowable and actual emissions from other qualified facilities in accordance with paragraph (4) of this subsection.
 - B. The allowable emissions from facilities that were never constructed shall not be used in intraplant trading.
 - C. The decreases in allowable and actual emissions shall be based on the emission rates for the same time periods (e.g., hourly and 12-month rolling average) as the allowable emissions for the facility at which the change will occur and for which an intraplant trade is desired.
 - D. Actual emissions shall be based on the data; this is representative of the emissions actually achieved from the facility during the relevant time period (e.g., hourly or 12-month rolling average).
10. The existing level of control may not be lessened for a qualified facility.
11. A separate netting analysis shall be performed for each proposed change under this subsection.

OUR SERVICES AND APPROACH:

SAGE'S QUALIFIED FACILITY CHANGE ANALYSIS

TCEQ air permitting options are sometimes confusing, and facilities often need assistance charting their way through the regulatory maze. Sage recommends the following step-by-step analysis to meet SB 1126 requirements:

- STEP 1** Sage analyzes the general requirements of Rule 116.116(e) and the specific applicability of each section to the facility under review. In order to complete this task, Sage reviews the TCEQ authorization history of each facility under consideration and determines which facilities meet the definition of a qualified facility.
- STEP 2** Sage evaluates the client's proposed project to determine the appropriateness of the qualified facility change authorization option.
- STEP 3** If the qualified facility change option is deemed feasible, Sage proceeds with the following action items:
 - A. Determine the allowable emission rates for all emission points at the facility involved the change.
 - B. Determine any increases above the facility maximum emission rate allowables.
 - C. Identify other qualified facilities where possible reductions in emission rate allowable can be made.
 - D. Calculate emission rates after the proposed change to confirm that there will be no net increase in emissions allowables at the TCEQ account.

OUR SERVICES AND APPROACH:

SAGE'S QUALIFIED FACILITY CHANGE ANALYSIS

- E.** Perform any netting calculations to ensure that Federal PSD or Nonattainment permitting will not be triggered.
- F.** Analyze any specific compound emission limits and determine if any compound interchanges are necessary and if any Effects Screen Level (ESL) normalization adjustments need to be made.

STEP 4 Sage also prepares any required permit revision submittals to document the qualified facility changes in the appropriate TCEQ permit file.

STEP 5 Sage prepares documentation of the qualified facility change to be maintained at the plant site pursuant to Section 116.117(a). This documentation includes, as a minimum, the following:

- A.** A description of all emission increases and decreases associated with the physical or operational change
- B.** A description of the physical or operational change
- C.** A description of any equipment being installed
- D.** Sufficient information necessary to show that the project will not adversely affect ambient air quality
- E.** The project will comply with as applicable with Federal PSD and Nonattainment permitting requirements and Section 112(g) of 40 CFR Part 63

STEP 6 Sage completes and files Form PI-1E and develops all required data elements and any additional information required by the TCEQ. If there are any questions by the agency during the permit renewal review, Sage works with the agency to resolve any issues.

ADMINISTRATIVE DATA

Sage coordinates with the client and the TCEQ to incorporate all relevant documentation in support of the qualified facility notification submittal. This includes all data elements of the Form PI-1E, as required, including process descriptions, maps, process flow diagrams, and emissions calculations.

TIMING/PROCESS

The qualified facility submittal review can take several months or longer, depending upon the complexity of the permits affected, compound interchanges, intraplant trades, and agency backlog. Sage generally requires at least 60 days to prepare a qualified facility notification package, depending upon the availability of the required documentation information.