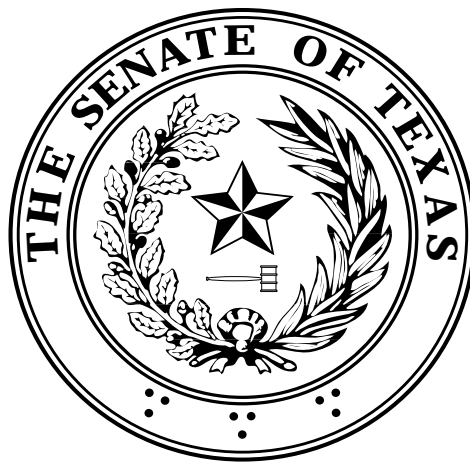


The Senate Interim Committee on Natural Resources



Interim Report to the 77th Legislature

Implementation of SB 7 and SB 766

November 2000

TEXAS SENATE NATURAL RESOURCES COMMITTEE

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November 1, 2000

The Honorable Rick Perry
Lieutenant Governor of Texas
Members of the Texas Senate
Texas State Capitol
Austin, Texas 78701

Dear Governor Perry and Fellow Members:

The Committee on Natural Resources of the Seventy-Sixth Legislature hereby submits its interim report including findings and recommendations for consideration by the Seventy-Seventh Legislature.

Respectfully submitted,

Handwritten signature of Senator J.E. "Buster" Brown in cursive.

Senator J.E. "Buster" Brown, Chair

Handwritten signature of Senator Ken Armbrister in cursive.

Senator Ken Armbrister, Vice-Chair

Handwritten signature of Senator Gonzalo Barrientos in cursive.

Senator Gonzalo Barrientos

Handwritten signature of Senator Teel Bivins in cursive.

Senator Teel Bivins

Handwritten signature of Senator Bill Ratliff in cursive.

Senator Bill Ratliff

Handwritten signature of Senator Tom Haywood in cursive.

Senator Tom Haywood

Handwritten signature of Senator Eddie Lucio in cursive.

Senator Eddie Lucio

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ACRONYMS

BACT	Best Available Control Technology
CARE	Clean Air Responsibility Enterprise
ESL	Effects Screening Level
GACT	Generally Achievable Control Technology
MPP	Multiple Plant Permit
NAAQS	National Ambient Air Quality Standards
NO _x	Nitrogen Oxide
PERC	Project Emission Reduction Credit
PUC	Public Utility Commission of Texas
SIP	State Implementation Plan
SO ₂	Sulfur Dioxide
TCAA	Texas Clean Air Act
TNRCC	Texas Natural Resource Conservation Commission
VERP	Voluntary Emissions Reduction Permit

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INTRODUCTION

The 76th Texas Legislature enacted two major pieces of legislation that addressed air quality in the State of Texas. Senate Bill (SB) 7, the Electric Utility Restructuring Bill, established a mandatory permitting system for electric generating facilities, mandated goals for the increased use of renewable sources of energy, and created a mechanism for electric utilities to recover certain environmental costs. SB 766 established the Voluntary Emissions Reduction Permit (VERP) program for other types of grandfathered facilities. It also made refinements to existing Texas Natural Resource Conservation Commission (TNRCC) permitting programs, established TNRCC authority to set a *de minimis* standard, authorized the TNRCC to issue standard permits and multiple plant permits (MPPs), and modified the air emission fee as it applies to grandfathered facilities. Both of these bills created innovative programs to significantly reduce emissions of air contaminants in Texas.

The Senate Committee on Natural Resources was charged by Lieutenant Governor Rick Perry to monitor the implementation of the environmental provisions of SB 7 and SB 766 and report on their impacts.

BACKGROUND

The Texas Clean Air Act (TCAA) sets forth the system for permitting sources of air emissions in Texas and vests the authority to issue those permits with the Texas Natural Resource Conservation Commission (TNRCC). First enacted in 1971, the TCAA requires stationary sources of air contaminants to obtain a permit from the

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State before they begin construction of a new facility or modify an existing facility.¹ Sources that were already in existence or under contract to construct at the time of initial passage, commonly known as “grandfathered facilities,” were exempted from permitting.² While permits were not required, there continues to be a misconception that these facilities are totally unregulated. This is not the case.

The TCAA also allows the TNRCC to establish standard permits for similar facilities and exempt sources it determines will not make a significant contribution of air contaminants to the atmosphere.³

Over time, the permitting process has evolved, and the Legislature and the TNRCC have explored options to improve the system. The TNRCC has adopted numerous “standard exemptions,” which apply to sources, such as outdoor barbecue pits and certain types of industrial processes, that do not significantly contribute air emissions. Many contain emission control requirements or operational restrictions to ensure their insignificance. In 1997, House Bill (HB) 3019 amended the TCAA to clarify that both changes to existing facilities, as well as the construction of new facilities, could be exempted if they were insignificant.⁴ The TNRCC also adopted standard permits under the formal rulemaking process established by the Administrative Procedure Act. Standard permits were adopted for certain pollution

¹ SEE TEX. HEALTH & SAFETY CODE ANN. §382.0518

² SEE TEX. HEALTH & SAFETY CODE ANN. §382.0518(g)

³ SEE TEX. HEALTH & SAFETY CODE ANN. §§382.051 and 382.057

⁴ Tex. HB. 3019, 75th Leg., R.S. (1997)

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control projects, oil and gas facilities, and municipal solid waste landfills.⁵ Finally, the TNRCC explored developing an exemption for activities which produce emissions too inconsequential to warrant regulatory action. These were identified as *de minimis* sources. The TNRCC's Business Process Review, a 1998 examination of the TNRCC's core functions, recommended development of a *de minimis* standard.⁶

In addition, growing interest in grandfathered facilities prompted efforts to determine their impacts and bring them into the permitting system. There is a wide spectrum of sources of grandfathered emissions, ranging from cotton gins to electric generating facilities to "mom and pop" cleaners to arts shops. HB 3019 directed the TNRCC to develop a voluntary emissions reduction plan for the permitting of existing significant sources.⁷ In response, the TNRCC convened the Clean Air Responsibility Enterprise (CARE) Committee, which consisted of representatives from local governments, the environmental community, and industry groups. The CARE Committee presented its recommendations to the TNRCC in December 1997. The committee's overall recommendation was for the development of a voluntary permitting program for grandfathered facilities.

In order to gain a better understanding of the emissions contributed by grandfathered facilities, the TNRCC also surveyed companies to determine their emissions from these sources. The survey found that using 1997 emissions reports, emissions from grandfathered facilities were approximately 900,000 tons per year.

⁵ SEE TITLE 30 TEXAS ADMINISTRATIVE CODE §§116.617, 116.620, AND 116.621

⁶ TEXAS NATURAL RESOURCE CONSERVATION COMMISSION BUSINESS PROCESS REDESIGN AND ORGANIZATIONAL REVIEW, TECHLAW, INC., MAY 1998

⁷ Tex. HB. 3019, 75th Leg., R.S. (1997)

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Broken down, approximately 318,000 tons were emitted from power plants, and 582,000 tons were emitted from other types of facilities.

IMPLEMENTATION OF SB 7 AND SB 766

The Texas Natural Resource Conservation Commission (TNRCC) is charged with the implementation of the SB 7 grandfathered permitting program and SB 766. The Public Utility Commission of Texas (PUC) has oversight over the rest of the provisions of SB 7. Over the interim, both have fully implemented the environmental provisions of these bills.

Key Provisions of SB 7

SB 7 contains the following major environmental initiatives:

SB 7 provides for the recovery of reasonable environmental costs incurred to improve air quality. Reasonable costs are set out in the bill as follows:

- the cost is applied to offset or reduce emissions to comply with the State Implementation Plan; or the reduction or offset is necessary for a grandfathered facility to obtain a required permit;
- the retrofit decision is determined to be the most cost-effective after consideration of alternative measures, including retirement of the generating facility; and
- the amount and location of the resulting emission reductions are consistent

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with the air quality goals and policies of the TNRCC.

The section further states that if the retirement of a generating facility is the most cost-effective alternative, taking into account the cost of replacement generating capacity, the net book value, including retirement costs and salvage value, of the affected facility shall be included.⁸

Texas Utilities Code, §39.264, requires that grandfathered electric generating facilities apply to the TNRCC for a permit by September 1, 2000. A facility that does not obtain a permit may not operate after May 1, 2003, unless the TNRCC finds good cause for an extension. The section includes the following provisions:

- Grandfathered electric generating facilities must reduce statewide emissions of nitrogen oxide (NO_x) by 50% and, in addition coal-fired facilities must reduce sulfur dioxide (SO₂) by 25%. These reductions must be made from 1997 emissions levels.
- Municipal corporations, electric cooperatives, and river authorities are allowed to exclude from these requirements electric generating facilities of 25 megawatts or less. Utilities had to inform TNRCC of their exclusions by January 1, 2000.
- For program implementation, Texas is divided into three regions.

S El Paso Region. Includes El Paso County.

⁸ *SEE TEX. UTILITIES CODE ANN. §39.263*

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S East Texas Region: comprised of all counties traversed by or east of I-35 and I-37, including Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties.

S West Texas Region: all counties not included in the East Texas Region and El Paso Region.

- A grandfathered electric generating facility can achieve reductions by installing emissions controls or by trading allowances with other electric generating facilities. Section 39.264 established a mass cap and trade system whereby utilities are issued emissions allowances by the TNRCC. Those allowances are determined by multiplying a utility's 1997 heat input by an emissions rate set forth by SB 7. The allowances are then allocated to the utility, and it may either operate under that emissions budget or trade allowances to another facility within its same region. The TNRCC was required to allocate allowances to each affected grandfathered electric generating facility by January 1, 2000.
- Electric generating facilities which already have permits may participate. These "electing" facilities can also be allocated allowances for facilities they designate. Only those emissions reductions from these facilities that go beyond the requirements of any other state or federal requirements can be used to satisfy the emissions reductions mandated by SB 7 for grandfathered facilities.

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- The TNRCC was also required to develop methods to monitor compliance, such as requiring monitoring and reporting actual emissions, and it provided for penalties.
- Finally, the section allowed emissions reductions in Ciudad Juarez, Mexico to generate credits that can be used in El Paso. The bill also exempts the El Paso region from the NO_x reduction requirements if the TNRCC or EPA determines that those reductions would actually lead to an increase in ozone levels.⁹

SB 7 also establishes a statewide goal for renewable energy. Section 39.904 states that by January 1, 2009, an additional 2,000 megawatts of generating capacity from renewable technologies will be installed in Texas. The cumulative totals are phased in as follows:

- 1,280 megawatts by 1/1/2003
- 1,730 megawatts by 1/1/2005
- 2,280 megawatts by 1/1/2007
- 2,880 megawatts by 1/1/2009

The PUC is required to establish a renewable energy credits trading program and adopt rules for the program.

A renewable energy technology is defined as any technology that exclusively relies

⁹ SEE TEX. UTILITIES CODE ANN. §39.264

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on an energy source that is naturally regenerated quickly and derived directly from the sun, indirectly by the sun, or from moving water or other natural movements and mechanisms of the environment. Fossil fuels, fuels from waste products, and inorganic sources are expressly excluded from the definition, though certain municipally owned utility operations may credit landfill gas toward this requirement under specific conditions.¹⁰

Key Provisions of SB 766

Generally, SB 766 made a number of changes to the TCAA that refined the present permitting system. It also established the VERP and MPP programs. The following provisions were included in the bill:

- The bill granted express authority to the TNRCC to determine a *de minimis* level of emissions below which no air quality preconstruction authorization would be necessary.¹¹
- SB 766 also allowed the TNRCC to establish procedures for issuance of standard permits outside of the rulemaking process. As noted previously, standard permits were required to be developed under the formal rulemaking procedures of the Administrative Procedure Act. The new approach under SB 766 allows the TNRCC to issue a standard permit and make it available for use by similar facilities, not unlike the process for general permits under the

¹⁰ SEE TEX. UTILITIES CODE, §39.904

¹¹ SEE TEX. HEALTH & SAFETY CODE ANN. §382.05101

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Texas Water Code.¹² Public participation requirements are similar to those for rulemaking. The TNRCC is required to publish public notice, conduct a public meeting, and respond to comments in writing. The bill also requires facilities authorized by a standard permit to comply with amendments to a standard permit within certain time periods.¹³

- The bill divided the previous category of exemptions from permitting into two categories--permits by rule for construction of types of facilities, and exemptions from permitting for changes to existing facilities. Permits by rule are the same as the previous standard exemptions. The change in terminology clarifies that such facilities are not exempt from environmental regulation. Exemptions from permitting now authorize only changes at insignificant facilities.¹⁴
- The bill also clarifies that the TNRCC may consolidate numerous preconstruction authorizations into a single permit.¹⁵
- SB 766 also provides the TNRCC authority for the VERP program, prescribing requirements for their initial issuance and renewal. Owners or operators may apply for a VERP September 1, 2001. The bill specifically mandates two types of control requirements for the program, depending on the location of the

¹² SEE 25 TEXREG 154

¹³ SEE TEX. HEALTH & SAFETY CODE ANN. §382.05195

¹⁴ SEE TEX. HEALTH & SAFETY CODE ANN. §§382.05196 AND 382.057

¹⁵ SEE TEX. HEALTH & SAFETY CODE ANN. §382.0511

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facility. Facilities outside the nonattainment or near-nonattainment areas must be able to use an air pollution control method that is at least as beneficial as the best available control technology (BACT) that the TNRCC required or would have required for a facility, of the same class or type, as a condition for permitting 120 months before an application for a VERP (10-year-old BACT). Those inside the nonattainment or near-nonattainment areas must use the more stringent of 10-year-old BACT or a control technology the TNRCC determines is generally achievable in the area (GACT). In addition, the TNRCC is authorized to defer reductions of certain air contaminants if the applicant makes substantial emissions reductions of other contaminants. Finally, the TNRCC is required to give priority to applications for facilities located less than two miles from the outer perimeter of a school, day-care, hospital, or nursing home.¹⁶ The bill also requires public participation to follow the notice and comment procedures used for federal operating permits.¹⁷ VERPs are not subject to contested case hearings.

- The bill also allows a grandfathered facility to offset excess emissions through a project emission reduction credit (PERC) if that facility cannot reduce emissions sufficiently to meet the control requirements of a voluntary emission reduction permit. Eligible projects include wind power, biomass gasification, solar power, reductions from a permitted facility, carpooling, alternative fuel use, and telecommuting. Credits generated under the program cannot be

¹⁶ SEE TEX. HEALTH & SAFETY CODE ANN. §382.0519

¹⁷ SEE TEX. HEALTH & SAFETY CODE ANN. §382.05191

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transferred.¹⁸

- The bill creates a multiple plant cap permit (MPP) that would allow for a single permit across multiple plant sites that are controlled by a single person. The TNRCC may issue an MPP if the combined emissions to be authorized do not exceed the total of the rates authorized in existing permits and the rates that would be authorized by a VERP. An MPP cannot authorize emissions that exceed the facility's highest historic annual rate or the levels authorized by the facility's most recent permit. Notice of the MPP must be published in the *Texas Register* and in one or more statewide or regional newspapers, and the TNRCC must hold a public meeting to solicit comment.¹⁹
- Finally, SB 766 requires the TNRCC to impose an emissions fee for all emissions at major sources with grandfathered facilities (for which no application is pending by September 1, 2001), including emissions in excess of 4000 tons per year, and also requires the commission to treble emissions fees every year for emissions from any facility in excess of 4000 tons per year at those sources.²⁰ A list of affected facilities may be found in Appendix A.

¹⁸ SEE TEX. HEALTH & SAFETY CODE ANN. §382.05193

¹⁹ SEE TEX. HEALTH & SAFETY CODE ANN. §382.05194

²⁰ SEE TEX. HEALTH & SAFETY CODE ANN. §382.0621

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TNRCC RULEMAKING FOR IMPLEMENTATION OF SB 7 AND SB 766

The TNRCC has adopted rules for the implementation of both bills. SB 7 was implemented with a single rule action. SB 766 was divided into two phases. The first phase addressed VERPs and Standard Permits. The second, still in process at this writing, addresses *de minimis* standards, the fee trebling requirement, MPPs, and permits by rule.

The SB 7 and Phase I SB 766 rules were developed concurrently during the Summer of 1999. The proposed rules were published in the *Texas Register* on September 10, 1999.²¹ The TNRCC held public hearings in El Paso and Lubbock on October 1, 1999; in Austin on October 4, 1999; in Irving on October 5, 1999; and in Houston and Beaumont on October 7, 1999. The comment period closed on October 11, 1999. After consideration of public comment, the rules were formally adopted by the TNRCC on December 16, 1999, and took effect January 11, 2000. The SB 7 and Standard Permit rules were submitted as revisions to the State Implementation Plan (SIP).

A number of issues were raised and addressed during the rulemaking. Below is a summary of the rules, the major issues identified by commenters, and the manner in which they were addressed in the adopted rules.

SB 7 Rulemaking

The rulemaking implemented the statutory provisions outlined above. The TNRCC also developed specific requirements to help implement the statute. Other features

²¹ SEE 24 TEXREG 7137-7176 (1999) (revisions to 30 TAC Chapters 101 and 116)

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of the rule included the following:

- Emissions of other air contaminants from grandfathered electric generating facilities may be permitted under the VERP program created by SB 766. In addition, grandfathered support facilities at the same location of grandfathered electric generating facilities may be permitted under the VERP program. These VERPs may be consolidated with permits issued under SB 7. Neither of these permitting options is required, but remain voluntary to the applicant.²²
- Emissions are regulated by the allocation, use, and trading of allowances. One allowance is equal to one ton of emissions of NO_x or SO₂. Electric generating facilities will begin using and trading allowances on May 1, 2003, which is the beginning of the first control period. Control periods run from May 1 until April 30 of the subsequent year, and new allowances will be issued for each control period, beginning in 2004. A grandfathered or electing electric generating facility may not emit in excess of the number of allowances held in its compliance account for any control period.²³
- Electric generating facilities subject to the federal acid rain program will use those monitoring requirements (40 CFR, Part 75) to demonstrate compliance with the emission allowances. Electric generating facilities not subject to the acid rain program would use Part 75, Part 60, or an alternative procedure

²² SEE 30 TAC §116.910

²³ SEE 30 TAC §101.332

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approved by the TNRCC.²⁴

- The new sections establish a notice and comment public participation process that is identical to the VERP program.²⁵
- Allowances not used for compliance may be banked or traded for use in subsequent control periods. Allowances can be bought or sold with some limitations. Brokers can bank or purchase allowances that were originally allotted to an electric generating facility in any region. Brokers may only sell allowances to electric generating facilities that are in the same region where the transferred allowances were originally allocated or to another broker. In addition, electric generating facilities may only hold banked or transferred allowances in their compliance account that were generated in their respective region. This is to ensure that allowances allocated to a region are not used in another region.²⁶
- Grandfathered and electing electric generating facilities in the El Paso region may meet emission allowances requirements by using emission reduction credits from any source located in Ciudad Juarez, Mexico and/or from electric generating facilities located in Sunland Park, New Mexico. The emission credits must have been generated from reductions that are enforceable,

²⁴ SEE 30 TAC §116.914

²⁵ SEE 30 TAC §116.920

²⁶ SEE 30 TAC §101.335

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permanent, quantifiable, surplus, and real.²⁷

The following issues were raised during the rulemaking.

- **Grandfathered Status Under SB 7.** Because SB 7 addressed only grandfathered NO_x and SO₂ emissions from electric generating facilities, the proposed rules provided that if a utility voluntarily requests to permit other types grandfathered facilities and their emissions, their permit applications would be processed using the VERP program established by SB 766. Affected utilities commented that the intent of SB 7 was to bring them into a permitting system, thereby removing their grandfathered status. However, the TNRCC responded that SB 7 only mandated reductions in NO_x and SO₂ and did not address grandfathered carbon monoxide and non-methane organic compound emissions. Further, the TNRCC noted that other facilities, such as coal-handling facilities, fuels storage tanks, and auxiliary boilers, were still grandfathered because SB 7 covered only electric generating facilities. Thus, the adopted rule included the provision allowing voluntary permitting of other grandfathered facilities and emissions.²⁸
- **The Use of SB 7 Program for SIP Reductions.** A number of comments were received expressing concern about the submission of the SB 7 program as a SIP revision. It was argued that the intent of SB 7 was not to achieve the reductions necessary to reach attainment for affected counties, and that any references to

²⁷ SEE 30 TAC §101.337

²⁸ SEE 25 TEXREG 199 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

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the SIP should be removed from the final rules. Rather, the intent of SB7 was to permit grandfathered electric generating facilities and to reduce their NOx emissions by 50%, and for coal-fired facilities, SO₂ emissions by 25%. However, the TNRCC determined that the reductions achieved under the bill were needed for the attainment of the national air quality standards.²⁹ The reductions were modeled and used to reduce the overall inventory of NOx emissions statewide, which, when combined with SIP control measures, were used in the attainment demonstration.

- **Permitting System Established by the Rules.** Affected utilities expressed concern that the proposed permitting system for SB 7 was more complicated than contemplated by the Legislature. They noted its similarity to the existing permitting program, citing a proposed requirement that a permit applicant identify and provide supporting information on any emission control equipment that may be necessary to meet the allocated allowances. Affected utilities argued that SB 7 did not give the TNRCC authority to evaluate and approve proposed control technology, nor did it give the TNRCC authority to approve or deny a specific type of control technology. Concern was also expressed that the rules were too complex and labor intensive regarding the requirements to show compliance with all federal rules and regulations in the initial application. Utilities noted that those rules and regulations apply regardless of whether a SB 7 permit is required. In response, the TNRCC revised the adopted rule to simplify the program. Rather than a new process for the review of control technology, the TNRCC will rely on the simpler process under the Standard Permit program. Additionally, the

²⁹ SEE 25 TEXREG 136 (2000) (preamble for adopted amendments to 30 TAC Chapter 101)

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TNRCC agreed that it was redundant to require demonstration of federal rule compliance and removed that requirement from the rule. Other changes were made to further simplify the rules and mitigate concerns that the rules took a “command and control” approach, while maintaining the goal of reducing emissions and permitting the facilities.³⁰

- **Exclusion of Cogeneration Facilities.** SB 7 provided that a grandfathered facility that generates electric energy for compensation must obtain a permit. Utilities commented that it was not the intent of Legislature to exclude grandfathered cogeneration facilities from being required to obtain a SB 7 permit. The TNRCC did not believe that SB 7 included cogeneration facilities which generate electric energy primarily for internal use. The adopted rule exempted cogeneration facilities that, during 1997, sold less than one-third of their potential electrical output capacity to a utility power distribution system. The rule also exempted cogeneration facilities that sold less than 219,000 megawatt-hours, a change made in response to comments that the rules should be consistent with EPA Acid Rain Program and also exempt smaller (less than 25 megawatt) cogeneration facilities that may sell more than one-third of their potential electrical capacity to a utility power distribution system.³¹
- **Electing Electric Generating Facilities.** Affected utilities commented that the proposed rules requiring electing coal-fired electric generating facilities that

³⁰ SEE 25 TEXREG 201 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

³¹ SEE 25 TEXREG 139 (2000) (preamble for adopted amendments to 30 TAC Chapter 101)

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participate in the trading program to be given allowances for both NO_x and SO₂ is not a requirement of SB7 and that the corresponding rule was too restrictive. It was argued that electing coal-fired electric generating facilities should be able to opt in for the NO_x allowances only and not be required to opt in for SO₂ allowances. However, the TNRCC believed that SB7 required such facilities to obtain both NO_x and SO₂ allowances, and that electing electric generating facilities had to opt into the entire program.³²

- **Definition of El Paso Region.** Comments were received from industry that the El Paso region should also include Sunland Park, New Mexico. The adopted rule defined the El Paso Region to include Sunland Park, New Mexico, and the City of Juarez. The change was made after a review of Legislative intent that the definition of the airshed be consistent with the La Paz Agreement.³³

Phase I SB 766 Rulemaking

The TNRCC rules provide procedures for obtaining a VERP, and the new procedures to create standard permits. In addition to implementing these provisions, the TNRCC developed requirements to facilitate implementation of these programs. Key features of the adopted rules are outlined below.

- The TNRCC established criteria for granting deferrals under TCAA, §382.0519(e). In considering whether to grant a deferral, the TNRCC would

³² SEE 25 TEXREG 142 (2000) (preamble for adopted amendments to 30 TAC Chapter 101)

³³ SEE 25 TEXREG 147 (2000) (preamble for adopted amendments to 30 TAC Chapter 101)

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consider the following factors: location of the grandfathered facility; size of reduction in other specific air contaminants; effect of the reduction of other contaminants on attaining the National Ambient Air Quality Standards (NAAQS); anticipated state and federal regulations requiring reductions in air contaminants being deferred; and benefit to public health from reductions of other contaminants versus those reductions deferred. The TNRCC may grant a deferral depending on these factors, and only if the applicant has clearly demonstrated that exceptional economic hardship or specific technical impracticability problems are a barrier to implementing a reduction required by a VERP.³⁴

- To be consistent with other permitting procedures and federal requirements, applicants for VERPs will be required to demonstrate compliance with applicable new source performance standards, national emission standards for hazardous air pollutants, and federal permitting requirements under prevention of significant deterioration and nonattainment new source review.³⁵ Once a VERP has been issued, the facility holding the VERP becomes subject to the current requirements in Chapter 116 to amend permits for facility modifications.³⁶
- The public notice and hearing requirements for VERPs are patterned after existing requirements in Chapter 122 concerning federal operating permits. Persons who are affected by emissions from the grandfathered facility may

³⁴ SEE 30 TAC §116.816

³⁵ SEE 30 TAC §116.811

³⁶ SEE 30 TAC §116.820

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request a hearing. The TNRCC would make a decision on the reasonableness of the request to determine if the hearing is justified. Notices of hearings would be published at least 30 days before the hearing at the applicant's expense. Any person may comment at the hearing and during the corresponding comment period. The TNRCC would be required to respond to each comment and provide individual notification to each commenter of the action on the application and any amendments made as a result of comment.³⁷

- The rules contain a change in the use of amended standard permits. Under the former procedures, facilities authorized by a standard permit could continue to operate under the version by which it was authorized even if the permit was subsequently revised. In accordance with TCAA, §382.05195(f), facilities authorized by a standard permit must comply with amendments to a standard permit within certain time periods. To be consistent with those requirements, the adopted rules require standard permit users to register and comply with an amended standard permit no earlier than the date an existing registration is to be renewed. Compliance with an amended standard permit will not be required any sooner than 24 months after the amendment is adopted unless it is necessary to protect public health.³⁸
- If a standard permit previously adopted by the TNRCC is replaced with a standard permit issued by the commission, and the requirements of the standard permit are changed in the process, then the facility would have to be registered

³⁷ SEE 30 TAC §116.840 - 116.842

³⁸ SEE 30 TAC §116.605

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under the new standard permit on or before the date established by the TNRCC in the new standard permit, but no earlier than renewal of the registration. Holders of registrations not wishing to register for the new standard permit will have the option of applying for or qualifying for other applicable permits or exemptions from permitting. The TNRCC will notify, in writing, all holders of existing registrations of the date by which a new registration must be submitted. Standard permits would remain in effect until amended, repealed, or revoked by the TNRCC, or until re-registration or compliance with an amended standard permit or other authorization is required.³⁹

- Registrations to use a standard permit would be valid for ten years. The TNRCC would send written notification of expiration of registration and the need to renew at least 180 days prior to expiration of the registration. However, the TNRCC would have the option of renewing a registration with no action required of the registrant.⁴⁰
- The adopted rules include procedures for TNRCC amendment or revocation of standard permits. The commission would be able to amend or revoke standard permits after providing notice in newspapers and in the *Texas Register*, and will provide written notice to registrants and persons requesting to be on a mailing list.⁴¹

³⁹ SEE 30 TAC §116.601

⁴⁰ SEE 30 TAC §116.604

⁴¹ SEE 30 TAC §116.605

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The following issues were raised during the comment period.

- C **The Use of VERP Program Reductions for the SIP.** EPA expressed concern that any reductions from the VERP program would in effect be double counted, meaning they would be used for SIP credit, and for netting, offsetting, and trading. Industry was also concerned about VERP reductions being used for attainment demonstrations without prior consent. The TNRCC did not submit the VERP program as a SIP revision. However, the TNRCC retained the option to use a portion, or all, of the reductions in SIP attainment demonstration modeling and committed to work with interested parties to develop an appropriate strategy for that use.⁴²
- C **Health Effects Review Under the VERP Program.** As an incentive for participation, the TNRCC proposed an abbreviated health effects review if actual emissions would be reduced under the VERP. A full health effects review would be performed if the TNRCC determined it was more appropriate. Comments were received both in support and opposition. Supporters requested the mechanism for triggering an automatic abbreviated health effects review be broadened, while opposing comments argued against providing a streamlined process. The adopted rule provides that an abbreviated health effects review will be automatic only if reductions from the highest emission rate over the last three years are realized. However, an abbreviated health effects review will often be allowed when there are other mitigating factors.⁴³

⁴² SEE 25 TEXREG 158 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

⁴³ SEE 25 TEXREG 159-161 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

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C Definition of Near-Nonattainment Area for Purposes of Requiring GACT.

A number of comments were received calling for the entire East Texas Region to be designated as near-nonattainment for purposes of requiring GACT. However, the adopted rule conformed with the near-nonattainment counties defined by Article VI, §13, of the TNRCC's appropriation in House Bill 1, 76th Legislature. That section appropriates funding for air quality planning in near-nonattainment areas defined as Austin, Corpus Christi, Longview-Tyler-Marshall, San Antonio, and Victoria. The TNRCC believed that it was appropriate to implement the provision using a definition consistent with the Appropriations Act. Further, TNRCC analysis of grandfathered sources in the region showed that only 3 percent of the largest sources statewide, representing approximately 5 percent of emissions, would be significantly affected by a broader definition. Thus, it concluded that there would be little environmental benefit to expanding the area where GACT applies.⁴⁴

C Determination of GACT. Comments were received calling for inclusion of a condition in the permit that would require facilities that use a less stringent control requirement due to "the age and useful life of the facility" to cease operation once the projected limit on useful life is reached. The adopted rules provide that the TNRCC will consider age and remaining useful life based upon cost of control per ton of emissions reduced. In addition, the TNRCC stated that it will use permit conditions to limit the continued operation of a facility beyond its projected remaining useful life.⁴⁵

⁴⁴ SEE 25 TEXREG 162 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

⁴⁵ SEE 25 TEXREG 164 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

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The proposed rule also included a presumption that GACT would be between ten-year-old BACT and BACT in stringency. Industry commented that ten-year old BACT should be the starting point for GACT with first-tier BACT as the ceiling and called on the TNRCC to reconsider its position. The TNRCC made no changes in response to this comment, noting that it believed in most cases that GACT is between ten-year-old BACT and BACT in stringency. Further, before age and remaining useful life are considered, the definition of GACT provided by SB 766 is almost identical to first-tier BACT. Therefore, the TNRCC concluded that first-tier BACT is the most appropriate starting point for determining GACT.⁴⁶

C **PERCs.** Environmental groups are generally opposed to the use of PERCs, arguing that they allowed the burden of pollution to be shifted from one group to another and that the list of PERC projects allowed would not result in real reductions. Industry representatives expressed concern that PERC reductions would be limited to the listed projects. The adopted rule was clarified to provide that creation of PERCs is not limited to the projects listed in the statute.⁴⁷

C **Deferrals.** The proposed rule set forth criteria for the issuance of a deferral, requiring a demonstration that there would be significant economic hardship without the deferral of certain reductions. Environmental groups generally opposed deferrals and are concerned that it is a loophole to allow grandfathered facilities to continue polluting. One comment called for the rules to require that

⁴⁶ SEE 25 TEXREG 165 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

⁴⁷ SEE 25 TEXREG 170 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

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the reductions to be made in other specific air contaminants as a condition of a deferral should be in addition to the requirements that would normally apply as part of a VERP. Industry was concerned about the economic hardship criterion. The adopted rule clarified that an emission reduction used for a deferral would be in addition to the amount of reductions of other specific air contaminants otherwise required by the VERP program. Additionally, the TNRCC retained the criteria, believing that they were consistent with Legislative intent that deferrals only be used under extreme circumstances.⁴⁸

- **Standard Permits.** Industry representatives commented that the TNRCC should allow existing, adopted standard permits to continue in force for facilities already authorized by them and make a clear distinction between existing program requirements for existing, adopted standard permits, and the new requirements for “issued” standard permits. They requested that the rule be modified to reflect that a facility permitted under an adopted standard permit is not bound by amendments to the standard permit, noting that while it is true that an issued standard permit must be met on an evolving basis, it is not true of existing adopted standard permits. The TNRCC declined to modify the rule in response to these comments, noting that the statute requires that a facility authorized to emit air contaminants under a standard permit must comply with an amendment to a standard permit without differentiating between an adopted and issued standard permits.⁴⁹

⁴⁸ SEE 25 TEXREG 171-172 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

⁴⁹ SEE 25 TEXREG 177 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

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Industry representatives also requested a grace period for facilities to comply with an amended, issued standard permit. It was also suggested that the TNRCC provide advanced written notice to existing registrants of proposed amendments to ensure full public participation in the process by those whose interests are directly affected. The adopted rule was amended to provide for a minimum 24-month grace period to comply with an amended standard permit, unless the amendment is necessary to protect public health. Further, the rule provides for written notice to registrants and interested parties prior to amendment of a standard permit.⁵⁰

Phase II SB 766 Rulemaking

Phase II of the TNRCC's implementation of SB 766 was proposed in the *Texas Register* on April 7, 2000. A public hearing was held in Austin on May 4, 2000, and the comment period closed on May 8, 2000. The package was adopted by the TNRCC on August 9, 2000.

In addition to placing the fee trebling provision into regulation and changing all former references to "standard exemptions" to "permits-by-rule," the rules also set forth criteria for establishing *de minimis* standards. The new §116.119 establishes the criteria under which a facility would be considered *de minimis*. The TNRCC would use four options for determining whether a facility or group of facilities would be considered *de minimis*:

- a list of *de minimis* facilities which would be maintained by the TNRCC, and which

⁵⁰ SEE 25 TEXREG 179-180 (2000) (preamble for adopted amendments to 30 TAC Chapter 116)

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can be amended upon petition;

- site-wide material usage rates;
- emission rates based upon TNRCC Effects Screening Levels (ESLs); or
- on a case-by-case determination by the executive director considering proximity to receptors, emission rate, engineering judgement, and determination that no adverse toxicological or health effects would occur off-site.⁵¹

In addition, the rules establish the procedures for issuing MPPs. The rules contain the following provisions to facilitate implementation:

- For determining the highest historic rate, the TNRCC would use data that show the maximum annual emission rate at which the emission unit actually operated and emitted before September 1, 1971, for 12 consecutive months, including any increases authorized by a permit by rule; or best engineering judgement in the absence of historical data.⁵²
- The proposed rules contained an application fee of \$450.00 plus the cost of public notice. The fee was adopted to assist TNRCC with recouping notice costs.⁵³

⁵¹ SEE 25 TEXREG 8681 (ADOPTED 30 TAC §116.119)

⁵² SEE 25 TEXREG 8688 (ADOPTED 30 TAC §116.1010)

⁵³ SEE 25 TEXREG 8671 (preamble for ADOPTED 30 TAC §116.1050)

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- For grandfathered facilities included in an MPP, applicants would apply for a VERP. For existing permitted facilities, applicants would provide a copy of the relevant permit. The TNRCC would use emission rate data to set limitations for each facility. Applicants would have the flexibility to over-control facilities at sites where the installation of controls is more cost-effective. Once the rates are set, permit holders would have to amend or alter the permit, as appropriate, to move emissions from facility to facility or site to site.⁵⁴
- Finally, since the aggregate emission rate under an MPP would be determined by the sum of existing permitted emission rates and VERP emission rates, applications for grandfathered facilities filed after September 1, 2001 would need authorization under Subchapter B of this chapter prior to being included in an MPP.⁵⁵

Major comments centered on the *de minimis* provisions and MPPs.

- C **Amendment of the De Minimis List.** Regarding *de minimis* facilities, it was recommended that the list be placed in the rules. As an alternative, it was suggested that the list could be published in the *Texas Register* when amended. The TNRCC responded by adopting a rule that would provide that when amending the list of *de minimis* facilities, the executive director will post notice on the TNRCC's World Wide Web page and allow 30 days for public comments.

⁵⁴ SEE 25 TEXREG 8688 (ADOPTED 30 TAC §§116.1011 & 116.1021)

⁵⁵ SEE 25 TEXREG 8688 (ADOPTED 30 TAC §§116.1011)

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Responses to comments will be posted after the comment period. The TNRCC did not feel it was necessary to publish in the *Texas Register* because the list will be available on an ongoing basis.⁵⁶

C **Reference to Effects Screening Level List.** Comments were received that referencing the ESL list might have the unintended consequence of making the ESLs standards. Additionally, it was noted that by referencing ESLs, they are rules, and that the ESLs themselves should therefore be subject to comment. It was suggested that a specific ESL list should be referenced so that it would require a rulemaking to reference a new ESL list, thus providing adequate notice to affected facilities. The TNRCC disagreed that referencing the ESL list implies that they are standards or a rule, noting that the levels are substance-specific values used to determine whether measured air concentrations would be expected to result in adverse health or welfare effects. However, the TNRCC agreed to modify the rule to reference a specific ESL list in the rule and provide a mechanism for the *de minimis* rules to be revised if appropriate.⁵⁷

C **MPPs Dynamic vs. Static.** Comments were received that the intent of the CARE report was that the MPP program would be based on flexible permits, i.e. changes could be made at facilities without going through an amendment process. The TNRCC responded that while the majority of the CARE Committee recommended that the TNRCC look at the possibility of developing such a program, TCAA, §382.05194 did not address this issue. The TNRCC also noted that a dynamic system would make it difficult to monitor compliance and ensure

⁵⁶ SEE 25 TEXREG 8674 (preamble for ADOPTED 30 TAC §116.119)

⁵⁷ SEE 25 TEXREG 8674 (preamble for ADOPTED 30 TAC §116.119)

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federal site-specific permitting requirements are not triggered. The TNRCC believed the up-front flexibility to determine where to control provided the flexibility contemplated by SB 766.⁵⁸

C **Amnesty.** Comments were received that the amnesty provision of SB 766 should be extended to MPPs, and not limited just to VERPs. The TNRCC agreed that this was consistent with the intent of SB 766 to facilitate permitting of grandfathered facilities, and the adopted rule provides this benefit.⁵⁹

C **Permitting of Grandfathered Facilities through MPPs following September 1, 2001.** Comments were received requesting that the TNRCC delete the requirement that, after September 1, 2001, grandfathered facilities must first obtain a permit before being included in an MPP. It was noted that the proposal was not consistent with the intent of SB 766. The TNRCC declined to modify the rule, noting that TCAA, §382.05194, sets emissions rates for grandfathered facilities based on those applicable under the VERP program. Because that program ends September 1, 2001, the TNRCC argued that the statute did not contemplate extending the VERP program's benefits after that date.⁶⁰

⁵⁸ SEE 25 TEXREG 8677 (preamble for ADOPTED 30 TAC 116, SUBCHAPTER J)

⁵⁹ SEE 25 TEXREG 8676 (preamble for ADOPTED 30 TAC 116, SUBCHAPTER J)

⁶⁰ SEE 25 TEXREG 8678 (preamble for ADOPTED 30 TAC §116.1011)

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PUC IMPLEMENTATION OF ENVIRONMENTAL PROVISIONS

The PUC has adopted rules governing the recovery of environmental costs. Further, it is in the process of implementing the renewable mandate.

Recovery of Environmental Costs Rulemaking

The PUC proposed rules for this program in the May 12, 2000 edition of the *Texas Register*. The rules were adopted on August 24, 2000. The proposed rules raised the following major issues that had to be addressed by the PUC:

- **Recovery of Emissions Allowance Costs.** The proposed rule prohibited recovery of purchased emissions allowance costs. A number of electric utilities expressed concern that this omission did not reflect SB 7's intent that cost recovery apply to costs incurred to offset emissions. The PUC agreed with the commenters and revised the rules accordingly.⁶¹
- **Reliability Units.** The proposed rules did not address units that must be run to ensure reliability. Commenters indicated that special consideration should be given to such units. The PUC agreed given the importance of reliability, concluding that the social costs of taking such units out of service outweigh the economic costs of retrofitting. Consequently, the rules were revised at adoption to provide that retrofitting will be considered the most cost-effective option in light of concerns about reduced reliability. The rule was also revised to provide

⁶¹ SEE 25 TEXREG 9450 (preamble for ADOPTED 16 TAC §25.261)

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that the Independent System Operator's determination that a unit is needed will be given greater consideration.⁶²

- **Benchmarks for Evaluating NOx Control Costs.** The proposed rules recommended the use of benchmarks for evaluating costs of various NOx emission control technologies. Costs at or below those benchmarks would be presumed reasonable for purposes of the 2004 true-up. The proposed rules set benchmarks lower than the costs estimated by TNRCC, generating concern from utilities that they were too low. Utilities argued that the benchmarks failed to consider increased costs from increased demand. PUC felt that the utilities did not adequately substantiate these concerns, but it did revise the rules to provide for a rebuttable presumption regarding the reasonableness of the benchmarks.⁶³
- **Cost-Effectiveness of Retrofit Alternatives.** The proposed rules required a comparison of the cost-effectiveness of retrofit alternatives, but did not provide detail on how to do so. TXU recommended a detailed framework which was incorporated with some modification by the PUC.⁶⁴
- **Costs of Future Regulations.** A number of commenters on the proposed rules argued that some provision should be made for costs of retrofits that result from future regulations. However, the PUC felt such a requirement in the rule

⁶² SEE 25 TEXREG 9452 (preamble for ADOPTED 16 TAC §25.261)

⁶³ SEE 25 TEXREG 9453 (preamble for ADOPTED 16 TAC §25.261)

⁶⁴ SEE 25 TEXREG 9460 (preamble for ADOPTED 16 TAC §25.261)

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would be too speculative.⁶⁵

However, the PUC did direct its staff at adoption to develop specific parameters for accounting for such costs. A workshop was held with interested parties on September 21, 2000, and a proposed methodology was developed and issued September 25, 2000. The environmental requirements assessed included:

- S mercury;
- S the 8-hour ozone standard;
- S the PM 2.5 standard;
- S acid rain standards;
- S regional haze; and
- S carbon dioxide requirements.

The PUC methodology attempted to determine the possible control technology associated with each requirement and estimate the costs. Generally, scrubbers or SCR was determined to be likely. At this writing, staff's proposal was scheduled for consideration by the PUC on October 4, 2000. The proposal is included as Appendix B.

Renewable Energy Mandate

The PUC is also establishing the renewable energy credits program to implement this provision of SB 7. The goals of the program will be to:

⁶⁵ SEE 25 TEXREG 9456 (preamble for ADOPTED 16 TAC §25.261)

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- ensure that the new renewable energy capacity is built in the most efficient and economical manner;
- encourage the development, construction, and operation of new renewable sources at those sites in Texas that have the greatest economic potential for capture and development of Texas' environmentally beneficial resources;
- protect and enhance the quality of the environment through increased use of renewable resources; and
- respond to customer's expressed preferences for renewable resources by ensuring that all customers have access to providers of energy from renewable sources.

The credit program becomes effective July 1, 2001. The Electric Reliability Council of Texas has been appointed administrator of the program.

PROGRESS IN PERMITTING GRANDFATHERED FACILITIES

SB 766 requires the TNRCC to submit a report to the Governor, the Lieutenant Governor, Speaker, the Senate Committee on Natural Resources, and the House Committee on Environmental Regulation showing the number of companies that have applied for a VERP and the reductions anticipated from the program. That report is due by January 15, 2001.

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The TNRCC maintains and regularly updates a “score-card” showing progress in permitting grandfathered facilities. The score-card tracks companies that have applied for some form of authorization, be it a permit-by-rule or a VERP, to permit their grandfathered facilities. As of September 1, 2000, the TNRCC has received 172 permit applications and issued 138 permits. Reductions from 1997 levels are estimated to be 15,858 tons. Appendix C provides information on the type of businesses volunteering.

Emissions reductions from SB 7 can be estimated because of the specific reductions mandated by the Act. SB 7 will result in reductions of 75,000 tons per year of NO_x; and 37,000 tons per year of SO₂, for annual reductions of grandfathered emissions of 112,000 tons. This represents an approximately 12 percent reduction in total grandfathered emissions from 1997 levels.

The total emissions reductions from the VERP program are difficult to estimate at this time because they depend upon the facility type, the industrial sector, the type of controls needed (10-year old BACT or GACT), and the number of facilities that apply.

SB 7 LEGISLATIVE OVERSIGHT COMMITTEE

SB 7 also established the Electric Utility Restructuring Legislative Oversight Committee with membership from both the House and the Senate. The committee held hearings during the interim to assess the impacts of the SIP on electric reliability, the PUT's implementation, and consumer issues. Significant environmental issues considered included:

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- **The SIP.** The committee took extensive testimony from the TNRCC and EPA on the possible impacts the SIP may have on electric reliability. The TNRCC committed to look at innovative programs to help ensure reliability. These include a standard permit for small distributed generation systems that would allow companies to generate their own power and remove load from the large electric generating facilities. Additionally, EPA provided testimony on the modeling used to develop SIP control measures. EPA estimated that it could cost up to \$2 million to make changes to the model for the Houston SIP.⁶⁶
- **The California Deregulation Experience.** The PUT testified to the committee that Texas will not see the same problems California has because:

S Texas was more deliberative in its deregulation. Comparatively speaking, California proceeded too quickly and did not take enough time to implement it in a thoughtful manner.

S Texas attracts more new generation than California.

S Texas has a better economic development climate. The regulatory scheme in Texas is conducive to new generation.

S Texas has streamlined siting authorizations—California's requirements are

⁶⁶ Testimony of Gregg Cooke, Regional Director, Environmental Protection Agency, Region 6, hearing of the Electric Utility Restructuring Committee, August 22, 2000, Dallas, TX

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very strict and cumbersome.⁶⁷

The committee is scheduled to issue a report to the leadership and 77th Legislature by November 15, 2000. The report must identify any problems associated with restructuring and recommend any statutory changes. The committee will go out of existence in 2005 unless continued.

⁶⁷ Testimony of Pat Wood, Chairman, PUT, hearing of the Electric Utility Restructuring Committee, August 22, 2000, Dallas, TX

APPENDIX A

List of sites with facilities with grandfathered emissions greater than 4,000 tpy.

Company	County	Number of Facilities
Alcoa	Milam	5
Cabot	Gray	3
Degussa Corp.	Aransas	2
Mobil Oil	Jefferson	1
Dynergy Midstream	Van Zandt	1
Altura Energy	Terrell	1
Louisiana-Pacific	Walker	1
	Total:	14

APPENDIX B
PROJECT NO. 21406
STRANDED COST RECOVERY OF ENVIRONMENTAL CLEANUP COST

Commission Staff Recommendation

Methodology for Accounting for
Potential Impact of Possible Future Environmental Requirements
§25.261(e)(1)(G)

The Commission Staff has determined that it is reasonable to assume that a 30-50% reduction of mercury emissions and the attainment of the 8-hour standard for NO_x will be required by 2010.

The following methodology is proposed by the Commission Staff as a reasonable mechanism for accounting for the potential impact of possible future environmental requirements in the retrofit analysis.

- (1) Determine the NPV for the NO_x and SO₂ control costs (capital and O&M) to meet the existing and promulgated TNRCC air emission regulations (further defined in the adopted rule, §25.261)
- (2) Determine the NPV of the estimated costs (using capital and O&M costs, compliance date, and expected probability on attached table) of future environmental requirements for mercury and additional NO_x standards that will have a compliance date by 2010
- (3) Sum the two NPV costs and compare to the cost of retiring the generating unit, taking into account the cost of replacement capacity
- (4) Select the most cost-effective alternative

Refer to the adopted rule, §25.261, for a complete description of the methodology for determining the retrofit and retirement alternatives. The analysis for the future environmental requirements shall use the following assumptions.

- (A) Capital costs are incurred in the year preceding the compliance year.
- (B) Operating costs start in the compliance year and continue each year until the facility retirement year or 2018, whichever occurs first.
- (C) Subparagraphs (c)(11)(E) and (c)(11)(F) of §25.261 would also apply to the future environmental requirements analysis.
- (D) The estimated capital and O&M costs are multiplied by the probability of occurrence for the control of a particular pollutant to determine the amounts that will be discounted in the NPV analysis.
- (E) If the control of one particular or primary pollutant also partially controls another pollutant, then any supplemental capital and O&M costs to reach full compliance of the secondary pollutant are multiplied by the probability of occurrence for the control of the secondary pollutant. Under this situation the

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compliance date for each pollutant is the particular year for the pollutant even though partial control of the secondary pollutant may take place the year that the primary pollutant is controlled.

- (F) No additional costs need be added pursuant to the methodology for units on which the relevant technology is already installed or will be installed as part of the utility's planned NO_x or SO₂ control strategy.

Commission Staff does not believe it is likely that one technology will control the level of emissions for two pollutants to meet the regulations for both pollutants.

Commission Staff believes the compliance year and probability for each pollutant will not change in subsequent years after 2000. However, the utility may present capital cost and O&M cost that differ from the amounts determined by the Commission, if the costs of the technology changes from now to the time the utility files its compliance plan.

APPENDIX C

VERP Applicant List - This list shows the companies which have applied for a VERP as set out in Senate Bill 766. This list is as of September 18, 2000. Please note that these facilities have applied for VERPs—this list does not represent all of the entities which have applied for some form of authorization for their grandfathered facilities. Further, some of these entities may have applied for more than one VERP at a given site.

Company	County
Southline Metal Products Company	Harris
Pioneer South Central	Colorado
Reynolds Metals Company	San Patricio
Medlock's Estacado Gin	Lubbock
T&S Gin	Terry
Lakeview Gin	Swisher
Littlefield Farmers Co-Op Gin	Lamb
Sparenburg Gin	Dawson
Hamlin Farmers Co-Op Gin	Jones
Vanderbilt Farmers Co-Op, Inc.	Jackson
Clays Corner Gin, Inc.	Parmer
Farwell Gin	Parmer
Mobil Oil Corporation	Jefferson
Ericksdahl Co-Op Gin	Jones
Fargo Gin	Wilbarger
West Camp Gin	Bailey
Haskell County Gin	Haskell
Mur-Tex Company	Randall
Alamo-Kerley Gins	Reeves
LCRA	Bastrop
Entergy Gulf States	Montgomery
Entergy Gulf States	Orange
LCRA	Llano