

The Texas Commission on Environmental Quality (commission) adopts amendments to §116.115, General and Special Conditions, and §116.611, Registration to Use a Standard Permit. Sections 116.115 and 116.611 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Texas state implementation plan (SIP). The commission adopts these amendments to Chapter 116 in order to correct a deficiency on the Texas Title V Operating Permit Program (OPP), published by the EPA in the January 7, 2002 issue of the *Federal Register* (67 FR 732). Sections 116.115 and 116.611 are adopted *with changes* to the proposed text as published in the July 26, 2002 issue of the *Texas Register* (27 TexReg 6631).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Title V of the Federal Clean Air Act Amendments of 1990 (FCAA) as codified in 42 United States Code (USC), §§7661 - 7661(e), required all states to develop OPPs that met federal criteria. The EPA promulgated a final rule identifying the criteria for state OPPs in 40 Code of Federal Regulations (CFR) Part 70, State Operating Permit Programs. The general goal of the OPP requirement is to facilitate compliance and improve enforcement by issuing permits that consolidate all applicable requirements into a federally-enforceable document. EPA reviews all state OPPs, and retains the authority to issue a notice of deficiency (NOD) for identified deficiencies in state OPPs after full approval of those programs.

The EPA promulgated source category-limited interim program approval of the Texas OPP on June 25, 1996. The EPA extended approval of interim programs, including the Texas OPP, three times. The third extension of interim program approval was challenged in the Court of Appeals for the District of

Columbia Circuit, and the extension was withdrawn. As a result of the litigation, on May 22, 2000, the EPA promulgated a rulemaking that extended approval of interim programs until December 1, 2001, in order to allow permitting authorities the time needed to correct all remaining identified interim approval deficiencies and obtain full approval for their OPPs by December 2001. Texas submitted its revised program that corrected all interim approval identified deficiencies and the EPA published the Texas full program approval notice in the December 6, 2001 issue of the *Federal Register* (66 FR 63318). The EPA also, through settling the litigation, agreed to solicit comments on programmatic or implementation deficiencies on Title V programs by publishing a notice in the *Federal Register*. This notice was published in the December 11, 2000 issue of the *Federal Register* (65 FR 77376) and EPA received comments on the Texas OPP. The EPA reviewed the comments, agreed that some of the comments received on the Texas OPP identified deficiencies, and those deficiencies were addressed in the NOD published in the January 7, 2002 issue of the *Federal Register*.

The January 7, 2002 NOD detailed items that must be corrected in order for the Texas OPP to retain approval. The commission is adopting these rule amendments to correct an item identified in the NOD relating to practical enforceability of potential to emit (PTE) limits established in certified registrations. 40 CFR Part 70 specifies the EPA's authority to withdraw an approved OPP when a state does not comply with the requirements of Part 70. If the state does not correct the deficiencies, the EPA administrator will apply sanctions, as specified in 42 USC, §7509(b), 18 months after the January 7, 2002 NOD. In addition, the EPA administrator will withdraw approval of the program, or a portion of the program, and promulgate, administer, and enforce a whole or partial federal program two years after the date of issuance of the NOD unless the deficiencies are corrected within 18 months of the

January 7, 2002 NOD. Correcting all deficiencies requires amendments to 30 TAC Chapter 106, Permits by Rule, and 30 TAC Chapter 122, Federal Operating Permits, as well as amendments to this chapter. The commission is adopting amendments to the rules that implement the Texas OPP and will submit program revisions to the EPA within 18 months of the NOD.

Resolution of The Deficiency

The January 7, 2002 NOD specified one deficiency that affects Chapter 116. In the NOD, the EPA stated that the commission's approach to establishing PTE limitations to avoid Title V permitting does not comply with the requirements of the FCAA. The EPA further noted that PTE limits established under §122.122 are not practically enforceable, because the rule does not meet one of the requirements for practical enforceability that requires notice to the state from those establishing PTE limits.

The commission adopts amendments to Chapter 116, as well as Chapters 106 and 122, because Chapter 116 also contains language relating to documentation requirements for establishing PTE limits. The commission amends §116.611 to require registrations establishing a federally-enforceable emission limit to be submitted to the executive director, to the appropriate commission regional office, and to all local air pollution control agencies having jurisdiction over the site, in addition to being maintained on-site. This will fulfill the requirement of practical enforceability.

In addition, the EPA specified in the NOD that the commission's approach to establishing PTE limits was not federally-enforceable, because the applicable regulations were not part of the Texas SIP. In response, the commission will submit the amended §116.611 to the EPA as a revision to the Texas SIP.

SECTION BY SECTION DISCUSSION

The commission adopts §116.115(b)(2)(F)(ii) with changes to clarify that records must be maintained at an office within Texas having day-to-day operational control of the facility site if the facility site normally operates unattended. This is consistent with similar permit by rule recordkeeping requirements contained in §106.8, Recordkeeping. In addition, the term “facility” replaces the term “plant” for consistency with other language in §116.115. The commission also adopts changes to §116.115(b)(2)(F)(iii) to specify that the commission will make the records available to members of the public upon request. This is consistent with changes adopted in Chapter 122 in a concurrent rulemaking to address the NOD. Additionally, for consistency with the adopted changes to §116.611(c), the language in §116.115(b)(2)(F)(iii) is amended to refer to local air pollution control agencies having jurisdiction over the site. The commission adopts new §116.115(b)(2)(F)(vi) to specify that standard permit records must be retained for five years if a federally-enforceable emission limitation under §116.611 is established to avoid operating permit requirements under Chapter 122. This is consistent with existing recordkeeping requirements in Chapters 106 and 122. Minor administrative changes were also made to §116.115.

The commission adopts amendments to §116.611(a), to provide consistency with §116.604, which requires registration for standard permits unless specified otherwise in a standard permit. If registration is required, §116.611(a) specifies the manner that it must be submitted to the commission. The commission also amends §116.611(a) to specify that registrations, if required, are to be submitted on the required form. The text previously indicated the specific form required to be submitted. Such

specificity is not needed for the rule language and the general language being adopted gives the executive director flexibility in future forms development.

In addition, the commission adopts amendments to address the NOD on the Texas OPP. The commission amends §116.611(c) to specify that a person certifying and registering a federally-enforceable emission limit for a standard permit must submit the certified registration and maintain it on-site. The amendment will require all owners and operators, that have established emission limits to avoid applicability of Chapter 122, to submit the certified registrations if the emission limit was established after registration for the standard permit was submitted or if registration was not required. The commission adopts §116.611(c) with changes to clarify that, in order to avoid applicability of Chapter 122, a certified registration shall be submitted. The commission proposed §116.611(c) to specify that certifications shall be amended. The commission adopts §116.611(c) with changes to correct a grammatical error, and with changes in response to a comment submitted to clarify that certifications shall be amended if the basis of the emission estimates changes or the maximum emission rates listed on the registration no longer reflect the reasonably anticipated maximums for operation of the facility. The commission adopts new §116.611(c)(1) and (2) to establish the submittal deadlines for certified registrations. The new paragraphs provide that certified registrations previously established (but not submitted) must be submitted on or before February 3, 2003, and on or after the effective date of the rule certified registrations must be submitted upon operation. The commission originally proposed a submittal date of January 2, 2003, but because the rule adoption is scheduled to occur close to the holiday season, the commission determined that it would be appropriate to allow more time for owners and operators to process this required information. Also, in response to a comment received,

the commission adopts §116.611(c)(2) with changes to clarify the language specifying the registration requirement. Lastly, the commission adopts §116.611(c), and (c)(1) and (2) with changes to use consistent terminology for certified registrations.

Owners and operators were required to certify and register under §116.611(c) in order to establish a federally-enforceable emission limitation through the standard permit. Owners and operators who previously established federally-enforceable emission limitations through standard permits in compliance with §116.611(c) will not be required to pay a fee under §116.614 when they submit those registrations to the commission in compliance with the adopted change to §116.611(c), because §116.614 specifies that fees are required for registrations to use, amend, or renew standard permits.

The commission will submit amended §116.611 to the EPA as a revision to the Texas SIP, and once approved by EPA, the PTE limits will be federally-enforceable.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking action in accordance with the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule. A “major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Although the adopted rule amendments, to implement the requirements of 42 USC, §§7661 - 7661e, are intended to protect the environment or reduce risks to human health from environmental exposure through increased compliance with requirements already applicable to facilities, the rules are not anticipated to have adverse effects on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules require registrations for establishing PTE limits to be submitted to the executive director, the appropriate commission regional office, and all local air pollution control agencies having jurisdiction, in order to assure that the registrations are practically enforceable.

The requirements of the adopted rules are expected to result in little or no impact on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. All facilities affected by the adopted rules were already required to document the establishment of PTE limits in order to avoid the applicability of the federal OPP. Previously, the registrations were required to be kept on-site at the facilities. These adopted amendments are discussed in detail in the SECTION BY SECTION DISCUSSION part of this preamble.

Title V required all states to develop OPPs that met federal criteria. The EPA has promulgated a final rule identifying the criteria for state OPPs at 40 CFR Part 70. The general goal of the OPP requirement is to facilitate compliance and improve enforcement by issuing permits that consolidate all applicable requirements into a federally-enforceable document. EPA reviews all state OPPs, and retains the authority to issue a NOD for identified deficiencies in state OPPs after full approval of those programs. The commission was granted final approval of the OPP in the December 6, 2001 issue of

the *Federal Register*. EPA issued an NOD on January 7, 2002 for the OPP, identifying items which must be resolved within 18 months after the NOD to avoid withdrawal of program approval and the application of sanctions in accordance with 40 CFR §70.10 and 42 USC, §7509. The adopted rules correct one of the deficiencies identified by the EPA in the NOD, in order to provide the basis for an EPA approval of the Texas OPP. If the commission fails to submit a program that is approvable by EPA, the EPA will implement a whole or partial federal OPP in Texas under 40 CFR Part 71, and impose sanctions, including a loss of federal highway funds and increased emission offsets in nonattainment areas.

Additionally, the analysis required by Texas Government Code, §2001.0225(c) does not apply because the adopted rules do not meet any of the four applicability requirements of a major environmental rule. The rulemaking action does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rules are adopted specifically to comply with the requirements of 42 USC, §§7661 - 7661e and related provisions of the Texas Health and Safety Code (THSC), Chapter 382, also referred to as the Texas Clean Air Act (TCAA), and do not exceed the requirements of either.

Additionally, the adopted rules do not exceed a requirement of a delegation agreement, because there is no agreement applicable to this rulemaking, and are not adopted solely under the general powers of the agency.

The commission solicited public comment on the draft regulatory impact analysis, but received no comments specifically regarding the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The purpose of the adopted rules is to fulfill the commission's obligation to implement the requirements of 40 CFR Part 70 through the creation of a state OPP. The commission was granted final approval of the OPP in the December 6, 2001 issue of the *Federal Register*. EPA issued an NOD on January 7, 2002 for the OPP, identifying items which must be resolved within 18 months after the NOD to avoid withdrawal of program approval and the application of sanctions in accordance with 40 CFR §70.10 and 42 USC, §7509. The adopted rules advance this purpose by responding to one of the deficiencies identified by EPA in the NOD.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The adopted rules will implement requirements of 42 USC, §§7661 - 7661e. The action is mandated by federal law because the state is required to submit a state OPP to avoid the imposition of sanctions under 42 USC, §7509. Additionally, promulgation and enforcement of these rules will not burden private real property. The rules do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the rules do not meet the definition of a takings under Texas Government Code, §2007.002(5).

The commission solicited public comment on the draft takings impact assessment, but received no comments specifically regarding the draft takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is 31 TAC §501.12(l) to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to this rulemaking is the policy is at 31 TAC §501.14(q) that commission rules comply with federal regulations in 40 CFR to protect and enhance air quality in the coastal area. The permits issued under Chapter 122 do not authorize new air emissions. Requiring submission of the registrations limiting PTE will provide a practically-enforceable mechanism providing potential air quality benefits to the citizens of Texas. Therefore, this rulemaking is consistent with the applicable CMP policy and goal.

The commission solicited public comment on the consistency of the proposed rulemaking with applicable CMP goals and policies, but received no comments specifically regarding the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

This adoption will affect owners and operators using a certified registration of emissions to establish a federally-enforceable emission limit to demonstrate that a site is not subject to the OPP. To ensure practical and federal enforceability of the PTE limits, owners and operators that have established or will establish such limits through a certified registration must maintain them on-site in addition to submitting the certified registration to the executive director, to the appropriate commission regional office, and to all local air pollution control agencies with jurisdiction over the site.

HEARING AND COMMENTERS

The commission held a public hearing on this rulemaking action on August 19, 2002 at the commission complex. The following commenters provided written and/or oral comment: EPA; Public Citizen on behalf of Public Citizen, SEED Coalition, Sierra Club, Galveston-Houston Association for Smog Prevention, and Hilton Kelley (Public Citizen); and BakerBotts, LLP, on behalf of the Texas Industry Project (TIP).

RESPONSE TO COMMENTS

Public Citizen expressed general support of the proposed rule amendments. No commenter expressed general opposition to the proposed rule amendment. EPA, Public Citizen, and TIP expressed concerns and/or suggested changes to the proposed rule changes.

General Comments

Public Citizen supported the commission's efforts to improve the Title V program to make it more consistent with federal requirements and more useful as a tool for improving compliance.

The commission appreciates the support.

Public Citizen supported the rule revisions to make PTE limits more enforceable, and the requirement that registrations used to limit PTE below Title V thresholds be submitted to the agency and local air pollution control agencies.

The commission appreciates the support.

Public Citizen commented that the requirement for submission of PTE registrations should be expanded. Public Citizen also commented that all registrations that include representations that become permit terms which are applicable requirements for any Title V facility should be submitted to the commission.

The commission made no change in response to this comment. The commission is adopting amendments to its rules to require that all registrations that establish federally-enforceable limits will be submitted. In addition, Chapter 116 requires registrations to be submitted, when appropriate, for purposes of obtaining new source review authorizations by using a standard permit. As such, all registrations will be submitted and will become part of the commission's files.

Public Citizen commented that permit engineers and members of the public have no way to review the representations and ensure that they are adequately monitored and reported. Public Citizen commented

that monitoring to demonstrate compliance with conditions included in registrations should be submitted to the commission with other Title V monitoring. Public Citizen further commented that any monitoring to demonstrate compliance with standard permit registrations should be submitted with all other Title V monitoring at least every six months. Public Citizen commented that representations in registrations with regard to construction plans, operating procedures, and maximum emission rates should be reflected in the Title V permit, or at least should be included in the Title V file, because they become permit conditions.

The commission made no change in response to this comment. Owners and operators of sites submitting registrations limiting PTE do so to either: 1) avoid permitting under Title V; or 2) limit hazardous air pollutant emissions such that the site is not subject to maximum achievable control technology requirements, even though the site may be subject to Title V permitting. If a registration is claimed under the first scenario, representations are not reflected in a Title V permit and Title V monitoring is not submitted because the site is not subject to Title V. A discussion of how these registrations meet the EPA's guidelines on limiting PTE to ensure practical enforceability is included elsewhere in this preamble. If a registration is claimed under the second scenario, the limit, along with other appropriate representations needed to demonstrate compliance with the limit, and any appropriate monitoring, recordkeeping and reporting is included in the Title V permit. Compliance certification and deviation reporting requirements also apply to these Title V permit conditions in the same manner as all other applicable requirements. Lastly, since all registrations will now be required to be submitted, they will

become part of the commission's files, which in accordance with state law, will be open to the public for review.

Public Citizen commented that sources with PTE limits that just have “tons per year” emission limits should be required to get federal permits. They are not actually limiting their PTE to keep them below the major source thresholds.

The commission made no changes in response to this comment. Chapters 106, 116 and 122 provide mechanisms for establishing federally-enforceable PTE limits. Certifications establishing federally-enforceable emission limits do not solely contain “tons per year” emission limits, but meet the federal guidance for appropriately limiting PTE below the major source thresholds. Therefore, sources that have established federally-enforceable emission limits through one of the mechanisms provided in the commission's rules will not be required to get federal permits for this purpose.

Specific Rule Language Comments

Public Citizen expressed a belief that under §116.115 all registrations for standard permits for Title V sites should be submitted to the agency.

The commission made no change in response to this comment. The commission is adopting amendments to its rules to require that all registrations that establish federally-enforceable limits

will be submitted. The commission notes, however, that the requirement for registrations for standard permits is located in §116.604, which is not within the scope of this rulemaking.

The EPA commented that to ensure practical enforceability, certified registrations submitted under §116.115 and §116.611 to limit a source's PTE must meet the EPA's guidance on limiting PTE. Specifically, EPA stated that to ensure practical enforceability, certified registrations generally must contain: 1) a production or operational limitation in addition to the emission limitation in cases where the emission limitation does not reflect the maximum emissions of the source at full design capacity without pollution control equipment; 2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and 3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting. Public Citizen commented that the PTE rules should require registrations used to limit PTE to include: 1) short-term emission limits, not tons-per year emission limits, so that compliance can be determined in a timely manner; 2) production or operational limits, not just emission limits; and 3) specific monitoring and reporting to demonstrate compliance with the limit. The general requirement to keep records necessary to demonstrate compliance is not practically enforceable because it is too vague. Public Citizen pointed out that the court case *U.S. versus Louisiana-Pacific Corp.* stated that just blanket restrictions are not enough to limit a source's PTE.

The commission made no change in response to these comments. The commission's rules regarding PTE limits and registrations establishing federally-enforceable emission limits adhere to guidance published by the EPA on limiting PTE. Registrations do not solely contain blanket

emissions restrictions. Registrations cannot solely include a tons per year limit, but must also include a short-term pounds per hour limit. The June 13, 1989 EPA guidance document entitled "Limiting Potential to Emit (PTE) in New Source Review (NSR) Permitting" specifies that, "To appropriately limit potential to emit consistent with the opinion in *Louisiana-Pacific*, all permits . . . must contain a production or operational limitation" The guidance document further notes that, "Operational limits are all other restrictions on the manner in which a source is run, including hours of operation, amount of raw material consumed, fuel combusted, or conditions which specify that the source must install and maintain add-on controls that operate at a specified emission rate or efficiency." The commission's registration forms specifically require an applicant to identify either: 1) maximum hourly emission rates and a maximum operating schedule in hours per day, days per week, and weeks per year, in addition to annual emission rates; or 2) hourly and annual emission rates, and documentation (including calculations, emission factors, equipment capacity, fuel consumption rate, sampling, monitoring, etc.) which demonstrates the basis for each emission rate. The commission notes that the January 25, 1995 EPA guidance document entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" asserts that mechanisms should ensure that states can create federally-enforceable limitations "without undue administrative burden to sources or the agency." In accordance with this goal, the commission's rules specify that records must be kept to demonstrate that a site is in compliance with any certified registration. The commission notes, however, that the January 25, 1995 EPA guidance document states that, "In general, practical enforceability . . . means that the permit's provisions must specify . . . the method to determine compliance including appropriate monitoring, recordkeeping, and

reporting." Registrations may include monitoring, however, recordkeeping is generally the method to determine compliance. Establishing recordkeeping as the method to determine compliance fulfills a site's requirement for establishing enforceable PTE limits. This is also consistent with the previously referenced June 13, 1989 EPA guidance document which specifies that permits containing production or operational limits should have "recordkeeping requirements that allow a permitting agency to verify a source's compliance with its limits." The commission also notes that 40 CFR Part 70 specifies that recordkeeping may be sufficient for a Title V source to meet requirements for periodic monitoring.

TIP recommended amendments to §116.611(c) to clarify the circumstances in which a new registration is required. The recommendation included the deletion of the phrase "shall be amended and" as it pertains to the certification and the addition of the following sentence: "The certification shall be amended if the basis of the emission estimates changes and the maximum emission rates listed on the registration no longer reflect the reasonably anticipated maximums for operation of the facility."

The commission agrees with the comment and adopts §116.611(c) to clarify that certifications shall be amended if the basis of the emission estimates changes or the maximum emission rates listed on the registration no longer reflect the reasonably anticipated maximums for operation of the facility.

TIP suggested a grammatical change to §116.611(c) by adding the word "to" to clarify that local air pollution control agencies are a designated recipient of registrations.

The commission agrees with the comment and adopts §116.611(c) with this suggested change.

TIP suggested moving the phrase "after the effective date of this rule" in §116.611(c)(2) to clarify that the only registrations due on the date of operation are those established after the effective date of the rule.

The commission agrees, in part, with the comment. Registrations established on the effective date of the rule are also due on the date of operation, as well as registrations established after the effective date of the rule. The commission is adopting §122.122(e)(2) to clarify the intent of the amendment.

SUBCHAPTER B: NEW SOURCE REVIEW PERMITS

DIVISION 1: PERMIT APPLICATION

§116.115

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; and §382.05195, which authorizes the commission to issue standard permits.

§116.115. General and Special Conditions.

(a) General and special conditions. Permits, special permits, standard permits, and special exemptions may contain general and special conditions.

(b) General conditions. Holders of permits, special permits, standard permits, and special exemptions shall comply with the following:

(1) the general conditions contained in the permit document if issued or amended prior to August 16, 1994; or

(2) the following general conditions if the permit or amendment is issued or amended on or after August 16, 1994, regardless of whether they are specifically stated within the permit document.

(A) Voiding of permit. A permit or permit amendment under this chapter is automatically void if the permit holder does one of the following:

(i) fails to begin construction within 18 months of date of issuance.

The executive director may grant a one-time 18-month extension to the date to begin construction;

(ii) discontinues construction for more than 18 consecutive months prior to completion; or

(iii) fails to complete construction within a reasonable time.

(B) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(C) Start-up notification.

(i) The permit holder shall notify the appropriate air program regional office of the commission prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow representative of the commission to be present at the commencement of operations.

(ii) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(iii) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(D) Sampling requirements.

(i) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(ii) All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission.

(iii) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(E) Equivalency of methods. The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the permit.

(F) Recordkeeping. The permit holder shall:

(i) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(ii) keep all required records in a file at the facility site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(iii) make the records available at the request of personnel from the commission or any local air pollution control agency having jurisdiction over the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner;

(iv) comply with any additional recordkeeping requirements specified in special conditions attached to the permit;

(v) retain information in the file for at least two years following the date that the information or data is obtained; and

(vi) for persons certifying and registering a federally-enforceable emission limitation in accordance with §116.611 of this title (relating to Registration To Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(G) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(H) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for emissions events and maintenance in accordance with §§101.201, 101.211, and

101.221 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; Scheduled Maintenance, Start-up, and Shutdown Reporting and Recordkeeping Requirements; and Operational Requirements).

(I) Compliance with rules.

(i) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the granting of the permit.

(ii) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(iii) Acceptance includes consent to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) Special conditions. The holders of permits, special permits, standard permits, and special exemptions shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of Title 30 of the Texas Administrative Code.

(2) Special condition for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit under Subchapter F of this chapter (relating to Standard Permits); or

(ii) an exemption under Chapter 106 of this title (relating to Permits by Rule).

(B) Such written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review under:

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)); or

(II) the provisions in §116.150 and §116.151 of this title (relating to Nonattainment Review) and §§116.160 - 116.163 of this title (relating to Prevention of Significant Deterioration Review).

SUBCHAPTER F: STANDARD PERMITS

§116.611

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA.

The amendment is also adopted under THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to administer the requirements of TCAA; §382.051, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter; and §382.05195, which authorizes the commission to issue standard permits.

§116.611. Registration to Use a Standard Permit.

(a) If required, registration to use a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the executive director, the appropriate commission regional office, and any local air pollution program with jurisdiction, before a standard permit can be used. The registration must be submitted on the required form and must document compliance with the requirements of this section, including, but not limited to:

- (1) the basis of emission estimates;

(2) quantification of all emission increases and decreases associated with the project being registered;

(3) sufficient information as may be necessary to demonstrate that the project will comply with §116.610(b) of this title (relating to Applicability);

(4) information that describes efforts to be taken to minimize any collateral emissions increases that will result from the project;

(5) a description of the project and related process; and

(6) a description of any equipment being installed.

(b) Construction may begin any time after receipt of written notification from the executive director that there are no objections or 45 days after receipt by the executive director of the registration, whichever occurs first, except where a different time period is specified for a particular standard permit.

(c) In order to avoid applicability of Chapter 122 of this title (relating to Federal Operating Permits), a certified registration shall be submitted. The certified registration must state the maximum allowable emission rates and must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration

reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be amended if the basis of the emission estimates changes or the maximum emission rates listed on the registration no longer reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be submitted to the executive director; to the appropriate commission regional office; and to all local air pollution control agencies having jurisdiction over the site. Certified registrations must also be maintained in accordance with the requirements of §116.115 of this title (relating to General and Special Conditions).

(1) Certified registrations established prior to the effective date of this rule shall be submitted on or before February 3, 2003.

(2) Certified registrations established on or after the effective date of this rule shall be submitted no later than the date of operation.