The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §116.615. Section 116.615 is adopted *without change* to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7245) and will not be republished.

The commission also withdraws the proposed amendments to §§116.110, 116.116, 116.710, 116.721, 116.787, 116.805, 116.820, 116.930, 116.1020, 116.1021, and 116.1424 as published in the September 8, 2006, issue of the *Texas Register*.

Section 116.615 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Senate Bill (SB) 1740, passed by the 79th Legislature, 2005, created new Texas Health and Safety Code (THSC), §382.004, Construction While Permit Application Pending. This section allows an applicant seeking a permit for a modification (or lesser change) to an existing facility to begin construction related to the application after the application is submitted, and before the commission has issued the permit, to the extent permissible under federal law. The decision to begin construction is at the applicant's own risk. The provisions of THSC, §382.004 also prohibit the commission from considering construction as a factor in determining whether to grant the permit sought in the application. Because existing commission rules require persons to obtain the permit prior to commencing construction, the commission proposed revisions to Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to maintain consistency with the revised statute.

The proposed revisions were published in the September 8, 2006, issue of the *Texas Register*. However, in response to adverse comments from the EPA, the commission is withdrawing the proposed revisions associated with pre-permit construction. The proposed changes to §§116.110, 116.116, 116.710, 116.721, 116.787, 116.805, 116.820, 116.930, 116.1020, 116.1021, and 116.1424 will not be adopted under this rulemaking action. The commission is continuing discussions with the EPA to identify approvable methods to provide greater flexibility for construction where appropriate.

Senate Bill 1740 also amended THSC, §382.05195, Standard Permit, to modify how distance limits, setbacks, and buffers are evaluated at facilities authorized by an air quality standard permit. Under new THSC, §382.05195(j), if a standard permit requires a distance limit, setback, or buffer from other properties or structures, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of: 1) the date new construction, expansion, or modification of a facility begins; or 2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility. The commission proposed revisions to Chapter 116 to maintain consistency with the new statutory requirements concerning distance limits, setbacks, and buffers for standard permits. The adopted rule incorporates the new distance limit, setback, and buffer zone provisions of THSC, §382.05195(j) into the general rules for standard permits.

The commission is also adopting concurrent rulemaking to 30 TAC Chapter 321, Control of Certain Activities by Rule, in this issue of the *Texas Register*.

SECTION DISCUSSION

§116.615. General Conditions.

The commission adopts new §116.615(11) to implement THSC, §382.05195(j). Under the adopted rule, if a standard permit requires a distance limit, setback, or buffer from other properties or structures, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of: 1) the date new construction, expansion, or modification of a facility begins; or 2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility. The rule overrides and supercedes any conflicting requirement concerning distance limits, setbacks, or buffers in any standard permit. As a clarification for situations where an existing standard permit facility is relocated, or an existing standard permit facility is expanded or modified, the determination as to whether the distance limit, setback, or buffer is satisfied shall be made based on the earlier of the date the application or notice of intent related to the proposed relocation, expansion, or modification is filed, or the date the expansion or modification of the facility begins (not the date of the original registration or notification that authorized initial construction of the facility).

The adopted rule also includes minor administrative changes to address outdated references, typographical errors, and conformity to *Texas Register* requirements and other agency rules and guidelines.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. 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, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking action implements Section 2 of SB 1740, passed by the 79th Legislature, that amended THSC, §382.05195. The amendment to §116.615 modifies when compliance with distance limits, setbacks, and buffers is to be determined at facilities authorized by an air quality standard permit. The amendment does not specifically protect human health or the environment.

The amendment to Chapter 116 is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rule does not meet any of the four applicability requirements. Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, this amendment implements Section 2 of SB 1740, passed by the 79th Legislature, that amended THSC, §382.05195, and therefore specifically meets an express requirement of state law. SB 1740, as implemented in this rulemaking, only modifies when compliance with distance limits, buffers, and setbacks for air quality standard permits issued by the commission is to be determined and therefore does not exceed a standard set by federal law. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and the Texas Water Code (TWC), which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.002, 382.017, and 382.05195. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rule does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this amendment and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of this rulemaking is to implement Section 2 of SB 1740, passed by the 79th Legislature, that amended THSC, §382.05195. The amendment would substantially advance this stated purpose by changing a section of Chapter 116 to modify when compliance with distance limits, setbacks, and buffers is determined at facilities authorized by an air quality standard permit.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, this rule provides more clarity and certainty as to when a buffer or setback is to be determined for facilities subject to a standard permit. Therefore, this rule will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this 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, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The revisions are necessary to ensure that commission rules maintain consistency with

applicable statutes. The revisions do not authorize or allow increased emissions of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The adopted rule affects all sites, regardless of the applicability of the Federal Operating Permits Program. The rule has no specific effect on federal operating permit sites.

PUBLIC COMMENT

The proposed revisions were published in the September 8, 2006, issue of the *Texas Register*. A public hearing for this rulemaking was held on October 2, 2006, and the comment period closed on October 9, 2006. The commission received comments on the proposed rule from Brown McCarroll, L.L.P., on behalf of the Texas Chemical Council (TCC), Corrugated Services L.P. (Corrugated Services), Dow Chemical Company (Dow), Galveston Houston Association for Smog Prevention (GHASP), HCS Group, Inc. (HCS Group), Locke Liddell and Sapp, L.L.P., representing Clean COALition and Robertson County: Our Land Our Lives (Locke Liddell & Sapp), Sierra Club Houston Regional Group (HSC), Solar Turbines, Inc. (Solar), and the United States Environmental Protection Agency, Region 6 (EPA).

RESPONSE TO COMMENTS

EPA provided detailed comments about the proposed rules. Overall, EPA indicated that the rules, as proposed, were not consistent with certain requirements of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans, and were generally not approvable as a SIP revision without a number of significant changes.

EPA stated that 40 CFR Part 51 (in part) requires states to establish legally enforceable procedures to review new and modified sources to ensure that the change will not violate a SIP control strategy or interfere with attainment or maintenance of National Ambient Air Quality Standards (NAAQS). EPA commented that 40 CFR §51.160(b), Legally Enforceable Procedures, requires a state to maintain the authority to prevent construction or modification that would violate the control strategy or interfere with attainment or maintenance of NAAQS. EPA also commented that 40 CFR §51.161(a), Public Availability of Information, requires that the state provide an opportunity for public comment on information submitted by the owner or operator, including the agency's analysis of the effect of the construction or modification on air quality, and the agency's proposed approval or disapproval. However, EPA commented that minor new source review (NSR) programs that allow for early construction have been approved, where the pre-permit construction rule provided for: 1) exclusion for major sources and major modifications; 2) notice to the state prior to commencement of construction; 3) prohibition on operation prior to issuance of the final permit; 4) public notice of the proposed pre-permit construction; 5) pre-permit construction approval from the state, including state authority to prevent construction if the change would violate the control strategy or interfere with attainment or maintenance of NAAQS; and 6) certification that the construction is at the applicant's

own risk and the applicant will not contest the final permit on the basis that construction has begun. EPA commented that the proposed rule is silent on several of these requirements, and as proposed, is not consistent with the requirements of 40 CFR Part 51. EPA commented that, at a minimum, the rule should include a requirement for pre-approval from the state prior to construction, and public notice of the pre-permit construction.

EPA commented that the rule as proposed could render TCEQ's preconstruction permit program deficient, because the proposed rules do not provide TCEQ with the authority to prevent the construction or modification as required by 40 CFR §51.160(b). EPA recommended amending the proposed rule to provide an approval process prior to allowing construction.

EPA commented that, before approval of any final rule that authorizes pre-permit construction, and on the record, TCEQ must be able to verify that the construction or modification of these sources prior to receiving a permit will neither cause nor contribute to a violation of any NAAQS nor result in a violation of a SIP control strategy. EPA stated that TCEQ must address the cumulative effect of pre-permit construction-generated emissions that the proposed rules would allow.

EPA commented that compliance with certain permit requirements (such as best available control technology (BACT), or applicable distance limitations) must be determined prior to commencement of construction. EPA commented that public notice prior to construction is required so that EPA and the public can provide meaningful comment on those requirements. EPA commented that public notice

prior to construction is required to satisfy the requirements of 40 CFR §51.161(a), and this requirement should be added to the rule to ensure SIP approval.

EPA commented that the TCEQ should add additional safeguards by requiring the submittal of a comprehensive permit application, public notice of the application for pre-permit construction approval, and written approval from TCEQ before a source can commence pre-permit construction. EPA stated that TCEQ should also require that the permit application include the request for pre-permit construction (including a list of activities that the owner or operator plans to undertake prior to receiving a final permit), certification by the applicant that the construction is at their own risk, certification that the applicant will not contest the final permit on the basis that construction has begun, and certification by the applicant that they will comply with any restrictions being sought to limit potential to emit, including applicable monitoring and recordkeeping requirements.

The intended purpose of SB 1740 and the proposed rule is to provide a streamlined and expedient process for applicants to begin construction on non-major projects at existing permitted sites, without waiting for the associated permit to be reviewed and issued. Under the proposed rules, the prospective facility would remain subject to the same control technology review and impacts review as any other project subject to permit review. In addition, the proposed facility would not be allowed to operate until after the permit is issued.

However, based on EPA's comments on the proposed rule, and EPA's comments on similar rules proposed or adopted in other states, it appears that EPA will not approve the proposed rules as a

SIP revision unless a number of substantial changes are made. If the proposed rule was modified to include the additional conditions and processes identified by EPA, it would largely negate the intended benefits of SB 1740. Therefore, the commission is withdrawing the proposed rules relating to early construction. This withdrawal includes all proposed changes to §§116.110, 116.116, 116.710, 116.721, 116.787, 116.805, 116.820, 116.930, 116.1020, 116.1021, and 116.1424.

EPA stated that it cannot approve the cross-reference in proposed §116.110(a)(2)(D) to the new Municipal Solid Waste Landfill standard permit in Chapter 330. EPA commented that any SIP approval of a cross-reference to another chapter that was not submitted to EPA for review would be a tacit approval of that chapter.

The commission disagrees with this comment. The proposed change to §116.110(a)(2)(D) was merely to update the reference to a subchapter in Chapter 330 that was recently changed. The commission did not intend to request EPA approval of that subchapter in this rulemaking. However, as stated above and for other reasons, the proposed changes to §116.110 are being withdrawn and will not be submitted to EPA as a revision to the SIP.

EPA commented that the proposed revision to §116.110(c) cannot be approved because it references Chapter 60, Compliance History, that Texas has not submitted to EPA as a SIP revision.

Although the intended purpose of the proposed change to §116.110(c) was to delete unnecessary bracketing in the rule text, as stated above and for other reasons, the proposed changes to §116.110 are being withdrawn and will not be submitted to EPA as a revision to the SIP.

EPA also commented that some of the proposed revisions in Chapter 116 include sections or subsections that have not yet been SIP approved; have not been submitted to EPA; or require that Texas address specific EPA concerns in order to be approved into the SIP. These sections include those relating to flexible permits and qualified facilities.

As a result of adverse EPA comments regarding approval of pre-permit construction authorization in §116.116(g), the proposed changes in Chapter 116 that reference §116.116(g) or fix cross-references are also being withdrawn and will not be submitted to EPA.

Locke Liddell & Sapp commented that the amendment to §116.116(f), concerning use of credits, does not limit the use of credits to facilities that have implemented BACT, and stated that the exchange of credits or offsets between BACT facilities and non-BACT facilities is a violation of the Federal Clean Air Act.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction. This includes all proposed changes to §116.116, including the proposed change to §116.116(f).

HSC generally opposed the changes to proposed §116.116(g) and associated rules that would allow a company to begin construction or modification without having permit approval. Locke Liddell & Sapp commented that proposed §116.116(g), and all proposed rules referencing §116.116(g), are in conflict with the Federal Clean Air Act, 42 United States Code (USC), §7475(a)(1) - (8), because the proposed rule allows construction to begin prior to the commission issuing the appropriate permit. Locke Liddell & Sapp also commented that proposed §116.116(g)(4) is vague and unenforceable. Locke Liddell & Sapp also commented that proposed §116.116(g)(5) is contrary to and in violation of 42 USC, §7475(a)(1) - (8).

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction, including proposed §116.116(g).

Dow and TCC commented that, for consistency with the statutory language of THSC, §382.004(a), the term "received" as used in §116.116(g) should be replaced with the term "submitted." Dow further commented that the preamble could be used to clarify how to determine the date of submission, including, but not limited to, the postmark date for regular or certified mail, or submittal receipt date for express mail.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction, including proposed §116.116(g).

HSC commented that allowing a company to construct before receiving a permit biases the decision-making process and places undue psychological and political pressure on TCEQ to approve a permit. GHASP indicated skepticism regarding the effectiveness of the provision that prohibits the commission from considering construction as a factor in approving the permit. GHASP commented that the construction itself, along with testing and startup, can have environmental consequences which should be considered before authorizing a modification.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction.

HSC commented that TCEQ does not have the authority to broaden the regulation (concerning the addition of new facilities under an existing permit) beyond the statutory language contained in THSC, §382.004. HSC commented that if there is an error in the statute, then it is the responsibility of the legislature to correct the error.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction.

Locke Liddell & Sapp commented that the proposed amendments violate various portions of the SIP.

As previously explained, the commission is withdrawing the proposed changes associated with early construction.

GHASP opposed the proposed rules because they provide another mechanism for applicants to increase harmful emissions without making proper accommodations for human health.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction.

GHASP commented that TCEQ is statutorily obliged to protect human health, and allowing applicants to construct before receiving the appropriate authorization abdicates that responsibility. GHASP also commented that the exclusion of projects that trigger federal Prevention of Significant Deterioration, or Nonattainment New Source Review permitting, is not sufficient, because some harmful air pollutants may not be considered when determining applicability of those federal permitting regulations. GHASP commented that TCEQ should not provide an incentive for applicants to avoid federal requirements.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction.

Dow and TCC generally supported the proposed rules relating to pre-permit construction. Dow commented that the proposed rules would serve as an example demonstrating Texas' competitiveness in the national and international marketplace.

The commission appreciates the support for the proposed rules; however, as explained previously, the commission is withdrawing the proposed changes associated with early construction.

Dow commented that TCEQ could minimize risk to the regulated community by establishing an informal, optional process where applicants could meet with TCEQ staff to review pending changes to TCEQ and EPA rules and guidance pertaining to the NSR permitting process. Dow also commented that TCEQ should continue to communicate pending changes to TCEQ permitting guidance in advance of formal policy changes.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction. Whenever possible, the TCEQ will continue to communicate policy changes as far in advance as possible.

Dow commented that THSC, §382.004(a) does not address whether the facility may operate before the permit is issued. Dow suggested that operation of the new or modified facilities should be allowed prior to issuance of the permit amendment, once the "impacts review" portion of the permit amendment is completed. This would allow facilities to begin operation as soon as possible while ensuring that public health and environmental concerns are addressed. Dow commented that this change would benefit projects that have a short construction time.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction.

TCC and Dow indicated support for the TCEQ's interpretation of the statute that would allow a broader range of applications to modify permits.

The commission appreciates the support; however, as explained previously, the commission is withdrawing the proposed changes associated with early construction.

HCS Group indicated general support for the proposed rule, but requested that the commission reconsider the proposed exclusion for standard permit projects. The proposed rule excludes standard permit projects from initiating early construction. HCS Group commented that the electric generating unit (EGU) standard permit provides an incentive for companies to embrace stringent environmental controls, in order to gain the most rapid, predictable schedule for their projects. HCS Group commented that the proposed rule would tend to remove some of the incentive for seeking the standard permit. HCS Group commented that allowing standard permits to be eligible for early construction could reduce overall project time by two to three months.

The commission appreciates the support for the proposed rules; however, as explained previously, the commission is withdrawing the proposed changes associated with early construction.

Corrugated Services and Solar requested that TCEQ extend the pre-permit construction rule to include registrants for the EGU standard permit. Solar commented that inclusion of the EGU standard permit in the proposed rule will preserve the advantages of investing in technologies that reduce emissions, and help to bring such projects online more quickly. Solar provided examples where expedited authorization of projects under the EGU standard permit resulted in a net reduction of emissions. Corrugated Services commented that the EGU standard permit provides industry with incentives to invest in the most energy efficient processes and the best emission control systems. Corrugated Services commented that expanding the SB 1740 rules to include standard permits would increase investor confidence and hasten environmental improvements by improving the speed at which clean, energy efficient units replace older units.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction.

Corrugated Services commented that the existing EGU standard permit was recently proposed to be amended, and the commission could include language within the EGU standard permit to reference SB 1740, to ensure that the amended standard permit is compatible with SB 1740.

As previously explained in the response to EPA's comments, the commission is withdrawing the proposed changes associated with early construction.

HSC opposed the proposed changes to §116.615(11) and §321.43(j)(2)(A), which specify how compliance with distance limits and buffer zones are evaluated. HSC commented that these changes create the potential for nuisance situations (such as odors from confined animal feeding operations), leading to citizen complaints, diminished citizen confidence in government, and wasted state resources.

The proposed changes are necessary to implement provisions of SB 1740 and maintain consistency with the TCAA. Under existing rules and policies, standard permit facilities are already allowed to continue operation in the event a new residence, school, place of worship, or other structure is built in close proximity, at some time after the standard permit facility was authorized. If nuisance conditions are confirmed, these situations can be addressed through existing rules under 30 TAC §101.4, Nuisance. No changes were made in response to this comment.

HSC commented that the proposed rules allow a company to bypass using the required authorization (an air quality permit under §116.110, Applicability), when it does not meet the distance limit, setback, or buffer zone. HSC suggested that compliance with distance limits and buffer zones could be determined at the time TCEQ determines that the application is administratively complete.

The proposed changes are necessary to implement provisions of SB 1740 and maintain consistency with the TCAA. The commission does not agree that the proposed rules allow a company to bypass using a required authorization (such as an air quality permit). The rules still require the registrant to comply with all distance limits, setbacks, and buffer zones, as

determined at the time the notification or registration is filed, or at the time construction, expansion, or modification begins. The statute specifies that the date is determined the earlier of when the application or notice is filed with the commission, or when new construction, expansion, or modification of a facility begins, not the date that the application is found to be administratively complete. Most standard permit registrations are processed in less than 45 days, so there will typically not be a long period of time between when the registration is filed, and when the executive director authorizes the request. No changes were made in response to this comment.

GHASP commented that nothing in the proposed regulations concerning setbacks, buffers, and distance limits would prohibit an applicant from filing applications for standard permits simply to limit prospective obligations to nearby property owners without their knowledge.

The proposed changes are necessary to implement provisions of SB 1740 and maintain consistency with the TCAA. A registrant for a standard permit must begin construction within a certain period of time once the permit (including a standard permit) is issued, or the permit is considered to be void. This restriction, combined with the fee associated with standard permit registrations, should be sufficient to deter speculative registrations that are not intended to be acted upon. No changes were made in response to this comment.

SUBCHAPTER F: STANDARD PERMITS

§116.615

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility; §382.011, concerning General Powers and Duties, which authorizes the commission to establish and control the level of quality to be maintained in the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA; and §382.05195, concerning Standard Permit, which authorizes the commission to issue standard permits for new or existing similar facilities.

The adopted amendment implements TWC, §5.103 and §5.105; and THSC, §§382.002, 382.011, 382.012, 382.017, and 382.05195.

§116.615. General Conditions.

The following general conditions are applicable to holders of standard permits, but will not necessarily be specifically stated within the standard permit document.

(1) Protection of public health and welfare. The emissions from the facility, including dockside vessel emissions, must comply with all applicable rules and regulations of the commission adopted under Texas Health and Safety Code, Chapter 382, and with the intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public.

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). If the facility remains eligible for a standard permit, the owner or operator of the facility shall notify the executive director of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of changes in representations must be received by the executive director no later than 30 days after the change.

(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under §116.110 of this title shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.

(4) Construction progress. Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office not later than 15 working days after occurrence of the event, except where a different time period is specified for a particular standard permit.

(5) Start-up notification.

(A) The appropriate air program regional office of the commission and any other air pollution control agency having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by a standard permit in such a manner that a representative of the executive director may be present.

(B) For phased construction, which may involve a series of units commencing operations at different times, the owner or operator of the facility shall provide separate notification for the commencement of operations for each unit.

(C) Prior to beginning operations 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) A particular standard permit may modify start-up notification requirements.

(6) Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the commission's appropriate regional office and any other air pollution control agency having jurisdiction prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(7) Equivalency of methods. The standard permit holder shall 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 standard permit. Alternative methods must 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 standard permit.

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, the United States Environmental Protection Agency, or any air pollution control agency having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.

(9) Maintenance of emission control. The facilities covered by the standard permit may 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. Notification for emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions

precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control agency having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

(11) Distance limitations, setbacks, and buffer zones. Notwithstanding any requirement in any standard permit, if a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(A) the date new construction, expansion, or modification of a facility begins; or

(B) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.